

APPENDIX

Supreme Court, U.S.
FILED

NOV 1 1971

E. ROBERT SEAVEN: CLERK

IN THE
Supreme Court of the United States

TERM, 1971

No. 71-119

MIKE TRBOVICH,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR CERTIORARI FILED JULY 23, 1971
CERTIORARI GRANTED OCTOBER 19, 1971

TABLE OF CONTENTS

	<u>Page</u>
DOCKET ENTRIES	1
COMPLAINT in 662-70	11
MOTION FOR PRELIMINARY INJUNCTION and EXHIBITS	17
MOTION OF MIKE TRBOVICH, Individually and as Chairman and on Behalf of Miners for Democracy for LEAVE TO INTERVENE, and EXHIBITS	28
DEFENDANT'S OPPOSITION TO MOTION TO INTERVENE	101
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION	105
ORDER AND OPINION DENYING MOTION TO INTERVENE	110
ANSWER	115
COURT OF APPEALS' JUDGMENT	122
ORDER GRANTING PETITION FOR WRIT OF CERTIORARI	122
ADDENDUM to the Secretary of Labor's Brief in the Court of Appeals	123

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

GEORGE P. SHULTZ,
Secretary of Labor
United States Department
of Labor,

Plaintiff,

v.

UNITED MINE WORKERS
OF AMERICA,

Defendant.

CIVIL ACTION
FILE NO. 662-70

DOCKET ENTRIES

1970

- March 5 Complaint, filed.
- 5 Summons and Complaint issued; served
3/18/70.
- 5 Motion for preliminary injunction, affidavits
and exhibits, filed.
- 6 Memorandum in support of motion for pre-
liminary injunction, filed.
- 18 Appearance of Edward L. Carey, Harrison
Combs, Willard P. Owens, Charles Widman
and Walter Gillcrist for deft., filed.

- 18 Interrogatories of deft. to pltf., filed.
- 18 Motion of deft. for extension of time to file opposition to motion for preliminary injunction, affidavit, filed.
- 30 Objections of pltf. to interrogatories, filed.
- 30 Response of pltf. to deft.'s motion for extension to respond to motion for preliminary injunction, filed.
- 30 Order extending time for deft. to file opposition to motion for preliminary injunction until May 1, 1970.
- April 2 Motion of pltf. for additional time to answer interrogatories, filed.
- 7 Motion of deft. for extension of time to file answer or otherwise plead.
- 7 Appearance of Carey, Combs, Owens, Widman and Gillcrist, filed.
- 7 Response of deft. to pltf.'s motion for extension of time to answer interrogatories.
- 8 Answer of pltf. to deft.'s interrogatories, Exhibits A-H, filed.
- 9 Motion of deft. for extension of time to file response to pltf.'s objections to interrogatories, filed.
- 15 Response of pltf. to deft.'s motion for extension of time within which to file its answer or otherwise plead, filed.

- 23 Motion of deft. to quash subpoena duces tecum, exhibit, filed.
 - 23 Copy of letter to Emmett Thomas from Dept. of Labor, filed.
 - 24 Order denying deft.'s motion to quash subpoena duces tecum, McGuire, J.
 - 24 Notice of appeal by deft. from order of 4/26/70; copy mailed to Orlikoff, filed.
 - 24 Motion of deft. to compel pltf. to answer certain interrogatories, filed.
 - 27 Record on appeal delivered to USCA.
 - 27 Receipt by USCA for original record filed, filed.
 - 30 Transcript of proceedings, 4-3-70; filed.
- May
- 1 Memorandum of law in support of objections to deft.'s interrogatories, filed.
 - 1 Motion of deft. for extension of time to file opposition to pltf.'s motion for preliminary injunction, filed.
 - 4 Motion of pltf. for extension of time to respond to deft.'s motion to compel answers to certain interrogatories, filed.
 - 8 Points and authorities in reply to deft.'s memorandum of law, filed.
 - 8 Response of pltf. to deft.'s motion for extension of time within which to oppose pltf.'s motion for preliminary injunction, filed.

- 12 Motion of pltf. for production of documents, affidavit, filed.
- 12 Answer of pltf. to interrogatory, filed.
- 13 Case reassigned to Judge Bryant on 5-13-70.
- 18 Response of pltf. to motion to compel answers to interrogatories, filed.
- 20 Interrogatories of deft. to pltf., filed.
- 20 Opposition of deft. to motion for production of documents, affidavit, filed.
- 21 Recommendation sustaining and overruling in part pltf.'s objections to interrogatories and allowing pltf. until June 8, 1970, to respond. Pretrial Examiner.
- 25 Notice of deft. to take deposition of pltf., filed.
- June 1 Objections of pltf. to recommendation of Pretrial Examiner, filed.
- 1 Objections of pltf. to deft.'s interrogatory No. 315, filed.
- 1 Supplemental answers of pltf. to deft.'s interrogatories, filed.
- 2 Certified copy of order of USCA denying motion for summary reversal and granting appellee's motion for summary affirmance and affirming order of April 24, 1970, filed.
- 4 Answer of pltf. to interrogatories, filed.
- 5 Motion of pltf. for a protective order, or in the alternative, motion to quash, filed.

- 8 Answer of pltf. to interrogatories.
- 10 Opposition of deft. to pltf.'s motion for protective order, and exhibits, filed.
- 10 Response of pltf. to deft.'s opposition to pltf.'s motion for production of documents, affidavits, filed.
- 10 Motion for pltf. for protective order argued and taken under advisement.
- 11 Motion of deft. for extension of time to reply to pltf.'s objections to the recommendation of the Pretrial Examiner, filed.
- 12 Motion of deft. for extension of time to file opposition to pltf.'s motion for a preliminary injunction, filed.
- 17 Response of pltf. to deft.'s motion for extension of time to file reply to pltf.'s objection to recommendation of Pretrial Examiner, filed.
- 23 Reply of deft. to pltf.'s opposition to the recommendation of the Pretrial Examiner, filed.
- 23 Motion of deft. to extend time until July 8, 1970, to answer motion of pltf. for preliminary injunction granted (signed 6-22-70).
- 23 Motion of deft. to extend time to and including June 23, 1970, to reply to pltf.'s objections to recommendations of Pretrial Examiner granted (signed 6-22-70) Bryant, J.

- 29 Notice of plftf. to take deposition of Justin McCarthy, filed.
- 29 Order granting motion of pltf. for protective order (signed 6-25-70) Bryant, J.
- July 7 Motion of deft. for extension of time to file opposition to motion for preliminary injunction, filed.
- 8 Motion of pltf. for production of documents argued and granted, Bryant, J.
- 15 Request of deft. for admission of facts, filed.
- 22 Memorandum by deft., filed.
- 23 Order granting motion of pltf. for production of documents by Aug. 3, 1970, Bryant, J.
- Aug. 7 Response of pltf. to deft.'s request for admissions, filed.
- 14 Notice of deft. to take depositions of Thomas F. Kane, Hollis W. Bowers, and Edwin A. Brewer, filed.
- 14 Motion of deft. for extension of time to respond to motion for preliminary injunction, filed.
- 21 Interrogatories of pltf. to deft., filed.
- 21 Request of pltf. for admissions; Exhibits A-Z; AA-ZZ; AAA-XXX, filed.
- Sept. 8 Response of pltf. to deft.'s reply to objections to recommendation of Pretrial Examiner, filed.

- 14 Motion of deft. for extension of time within which to file opposition to pltf.'s motion for preliminary injunction; P&A, filed.
- 16 Motion of deft. for extension of time until Sept. 15, 1970, to answer motion of pltf. for preliminary injunction granted (signed 9-14-70), Bryant, J.
- Oct. 2 Motion of Mike Trbovich individually and as chairman of and on behalf of Miners for Democracy, an Unincorporated Association, for leave to intervene, Exhibits A & B; C-1, C-2, C-3, & D, filed.
- 7 Motion of defendant to extend time to October 15, 1970, to answer motion of plaintiff for preliminary injunction granted (signed 10-6-70), Bryant, Jr.
- 7 Order substituting James D. Hodgson, Secretary of Labor, United States Department of Labor, for George P. Shultz as plaintiff (signed 10-6-70), Bryant, J.
- 8 Notice of deft. to take deposition of Henry A. Queen, filed.
- 8 Motion of deft. for extension of time within which to file answer or otherwise object to pltf.'s interrogatories and request for admissions, filed.
- 9 Memorandum of pltf.'s in opposition to motion of Mike Trbovich to intervene, filed.
- 12 Opposition of deft. to motion of Michael Trbovich and Miners for Democracy for leave to intervene, filed.

- 15 Motion of def't. for extension of time to file opposition to pl'tf.'s motion for preliminary injunction, filed.
- 16 Response of pl'tf. to def't.'s motion for an extension of time to file answers or otherwise object of pl'tf.'s interrogatories and request for admissions, filed.
- 19 Notice of def't. to take depositions of Thomas F. Kane and Edwin A. Brewer, filed.
- 21 Response of applicant to oppositions to motion to intervene, exhibit, filed.
- 21 Opposition of pl'tf. to motion for extension of time within which to file opposition to pl'tf.'s motion for preliminary injunction and pl'tf.'s request for immediate hearing on pl'tf.'s motion for preliminary injunction, affidavit, filed.
- 23 Motion of def't. for extension of time to file opposition to motion of pl'tf. for preliminary injunction argued and denied; opposition to be filed by October 29, 1970, Bryant, J.
- 22 Motion of Mike Trbovich, individually and as chairman of and on behalf of Miners for Democracy for leave to intervene, argued and taken under advisement, Bryant, J.
- 26 Transmittal sheet from USCA returning original record, filed.
- 29 Opposition of def't. to motion for preliminary injunction; affidavit; Exhibits A-I, Affidavits (22), filed.

- Nov. 9 Answer of deft. to pltf.'s request for admissions, filed.
- 9 Answer of deft. to pltf.'s request for admissions, filed.
- 9 Motion of deft. for extension of time within which to answer certain interrogatories and certain requests for admissions, filed.
- 17 Memorandum opinion denying motion of Mike Trbovich, individually and as chairman of and on behalf of Miners for Democracy, for leave to intervene, Bryant, J.
- 17 Order denying motion of Mike Trbovich, individually and as chairman of and on behalf of Miners for Democracy for leave to intervene, Bryant, J.
- 18 Response of pltf. to deft.'s motion for extension of time within which to answer certain interrogatories and certain requests for admissions, filed.
- 18 Answer of deft. to requests for admissions, filed.
- 20 Response of pltf. to deft.'s opposition to motion for preliminary injunction, filed.
- Dec. 1 Order extending time for deft. to answer complaint to and including 12-14-70 (signed 11-30-70), Bryant, J.
- 1 Order extending time for deft. to answer interrogatories and pltf.'s request for admissions to and including 12-7-70 (signed 11-30-70), Bryant, J.

- 2 Order sustaining objections of pltf. to Pretrial Examiner's recommendations as to deft.'s interrogatories 41, 42, 44, 45, 46, 280 and 281; overruling as to deft.'s interrogatories 294, 295, 296 and 315; and overruling as to interrogatories 67, 73, 76, 81, 83, 87, 88 and 90; pltf. granted leave until 12-5-70 to answer (signed 12-1-70), Bryant, J.
- 2 Order granting motion of deft. to compel pltf. to answer interrogatories 70, 74, 75, 166, 175, 177, 183, 184, 235 and 247 denied as to remaining (signed 12-1-70), Bryant, J.
- 4 Deposition of Thomas F. Kane for deft., filed.
- 4 Supplemental answers of pltf. to deft.'s interrogatories 70, 74, 75, 166, 175, 177, 183, 184, 235 and 247, filed.
- 4 Answer of pltf. to deft.'s interrogatories 294, 295, 296 and 315, filed.
- 7 Answer of deft. to interrogatories, filed.
- 7 Answer of deft. to requests for admissions, filed.
- 8 Notice of appeal by intervenor Mike Trbovich from order of 11-17-70; copy mailed to E.L. Carey and H.F. Leathers, filed.
- 15 Deposition of Edwin A. Brewer for deft., filed.
- 15 Deposition of Henry A. Queen for deft., filed.
- 15 Answer of deft. to count one and count two of complaint, filed.

- 15 Order extending time for deft. to answer complaint to and including 12-15-70, Bryant, J.
- 18 Motion of deft. for order compelling deponent to answer questions propounded at deposition, filed.
- 18 Interrogatories of pltf. to deft., filed.

[Filed March 5, 1970]

COMPLAINT

Plaintiff brings this action under Titles II and IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. 401 *et seq.*), hereinafter referred to as the Act for a judgment declaring the election held by the defendant on December 9, 1969, null and void and directing the conduct of a new election under the plaintiff's supervision and for an order directing and compelling the defendant and its subordinate Districts to maintain records as required by section 206 of the Act (29 U.S.C. 436).

For his First Cause of Action plaintiff alleges:

I

Plaintiff brings this cause of action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 *et seq.*).

II

Jurisdiction of this cause of action is conferred upon the Court by section 402(b) of the Act (29 U.S.C. 482(b)).

Defendant is, and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 900 Fifteenth Street, N.W., Washington, D.C., within the jurisdiction of this Court.

IV

Defendant is, and at all times relevant to this action has been, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j), and 401(a) of the Act (29 U.S.C. 402 (i), 402(j) and 481(a)).

V

Defendant, purporting to act pursuant to and in accordance with the provisions of its Constitution, held an election of its International officers among its members in good standing on December 9, 1969. This election was subject to the provisions of Title IV of the Act (29 U.S.C. 481 *et seq.*).

VI

(a) By letter dated December 18, 1969, Joseph A. Yablonski, a member in good standing of defendant union, filed a protest with defendant's International Executive Board, alleging violations of Title IV of the Act in the conduct of defendant's December 9, 1969 election of officers.

(b) By letter dated January 8, 1970, addressed to the plaintiff, Defendant through its General Counsel requested that the plaintiff conduct an immediate investigation of the December 9, 1969 election of International officers pursuant to Title IV of the Act, dispensing with

internal exhaustion of remedies procedures under defendant union's Constitution. Whereupon, plaintiff initiated an investigation.

(c) By telegram dated January 20, 1970, Mike Trbovich, a member in good standing of defendant union, through his counsel, filed a complaint with the Secretary of Labor alleging violations of the Act in the conduct of defendant's December 9, 1969 election of International officers.

VII

Pursuant to section 601 and in accordance with section 402(b) of the Act (29 U.S.C. section 521, 482(b)), plaintiff investigated said complaint and as a result of the facts shown by the investigation, found probable cause to believe that violations of Title IV of the Act had occurred in the conduct of defendant's election and had not been remedied at the time of the filing of this action.

VIII

Plaintiff alleges that in the conduct of the aforesaid election, defendant violated the provisions of Title IV of the Act (29 U.S.C. 401, *et seq.*) as follows:

(a) Section 401(a) of the Act (29 U.S.C. 481(a)) was violated in that defendant union failed to elect its international officers by secret ballot among the members in good standing in that many members were required or permitted to cast their ballots in such a manner that the member voting could be identified with the choice expressed.

(b) Section 401(c) of the Act (29 U.S.C. 481(c)) was violated in that

- (i) defendant union failed to provide adequate safeguards to insure a fair election; including permitting campaigning at the polls;
- (ii) denied candidates the right to have observers at polling places and at the counting of ballots

(c) Section 401(e) of the Act (29 U.S.C. 481(e)) was violated in that

- (i) Defendant failed to conduct its election in accordance with its Constitution, including the failure of many local unions to elect tellers and to hold a membership meeting to set the time and place of the election;
- (ii) Members were denied the right to vote, for or otherwise support the candidate or candidates of their choice without being subject to penalty, discipline, or improper interference or reprisal.
- (iii) Members were denied the right to vote, in that elections were not conducted in some locals.

(d) Section 401(g) of the Act (29 U.S.C. 481(g)) was violated in that defendant union used moneys received by it by way of dues, assessments, or similar levy, to promote the candidacy of its incumbent International officers, including but not limited to use of defendant's official publication, district offices, property and other facilities.

IX

The violations of section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of the aforesaid election.

For his Second Cause of Action plaintiff alleges:

I

Plaintiff brings this cause of action under Title II of the Act (29 U.S.C. 431 *et seq.*).

II

Jurisdiction of this cause of action is conferred upon the Court by section 210 of the Act (29 U.S.C. 440).

III

Paragraphs III and IV of this complaint relating to the First Cause of Action are hereby incorporated by reference into this Cause of Action.

IV

Defendant, is and at all times relevant to this action has been, subject to the reporting provisions of Title II of the Act (29 U.S.C. 431 *et seq.*).

V

Defendant has failed and is still failing to maintain records and to require its subordinate Districts to maintain records on matters required to be reported under Title II of the Act (29 U.S.C. 431 *et seq.*), which provide in sufficient detail the necessary basic information and data from which documents filed with the plaintiff may be verified, explained or clarified, and checked for accuracy

and completeness, as required by section 206 of the Act 29 U.S.C. 436).

WHEREFORE, the plaintiff prays for judgment:

(a) declaring the election held by defendant union to be null and void;

(b) directing the conduct of a new election for all constitutional officers under the supervision of the plaintiff;

(c) directing and compelling the defendant to maintain records, as required by section 206 of the Act (29 U.S.C. 436);

(d) enjoining the defendant, its officers, members, agents, servants, employees, attorneys and all persons in active concert and participation with them, pending final determination of the second cause of action of this complaint, from violating the provisions of Section 206 of the Act (29 U.S.C. 436);

(e) permanently and during the pendency of this action enjoining and restraining defendant, and its agents, servants, employees, attorneys and all persons acting, or claiming to act in their behalf and interest, from violating the provisions of section 206 of the Act (29 U.S.C. 436);

(f) awarding costs of this action; and

(g) granting such other relief as may be appropriate.

LAURENCE H. SILBERMAN
Solicitor of Labor

GEORGE T. AVERY
Associate Solicitor

U.S. Department of
Labor

Of Counsel

/s/ William D. Ruckelshaus
WILLIAM D. RUCKELSHAUS
Assistant Attorney General

/s/ Thomas C. Flannery
United States Attorney

/s/ Harland F. Leathers
HARLAND F. LEATHERS
Attorney, Department of Justice

Attorneys for Plaintiff

[Filed March 5, 1970]

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff moves the Court for a preliminary injunction in the above-entitled action enjoining the defendant, United Mine Workers of America, its officers, members, agents, servants, employees, attorneys, and all persons in active concert and participation with it, from expending or permitting the expenditure of funds of the International or of its subordinate Districts without maintaining records on the matters required to be reported under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 *et seq.*) which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, such records to include specifically, but without limitation, receipts, vouchers, worksheets, and applicable resolutions, as required by section 206 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 436).

The issuance of such a preliminary injunction is requested on the grounds that:

(1) defendant has performed and will continue to perform the acts referred to;

(2) such action by defendant will result in irreparable injury, loss and damage to plaintiff, by impeding his continuing investigation pursuant to section 601 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 521, as more particularly appears from the affidavits of Thomas F. Kane, Hollis W. Bowers, and Henry

A. Queen, attached to plaintiff's motion for temporary restraining order; and

(3) the issuance of a preliminary injunction herein will not cause inconvenience or loss to defendant but will prevent irreparable injury to plaintiff.

LAURENCE H. SILBERMAN
Solicitor of Labor

GEORGE T. AVERY
Associate Solicitor

EDWIN S. HOPSON
ROGER D. MARSHALL

Attorneys

U.S. Department of Labor
Of Counsel

/s/ William D. Ruckelshaus
WILLIAM D. RUCKELSHAUS
Assistant Attorney General

/s/ Thomas C. Flanery
United States Attorney

/s/ Harland F. Leathers
HARLAND F. LEATHERS
Attorney, Department of Justice

Attorneys for Plaintiff

[Filed March 5, 1970]

AFFIDAVIT

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

Thomas F. Kane, being duly sworn, deposes and says:

1. I am a Special Investigator, employed by the Branch of Auditing and Accounting Standards, Division of Reports, United States Department of Labor.

2. In the course of my official duties, I examined the records of the United Mine Workers of America (UMWA),

900 15th Street, N.W., Washington, D.C. concerning the granting of loans by the UMWA to its subordinate Districts. The records indicated that loans were made to subordinate Districts during the years 1967, 1968 and 1969 in the following amounts:

1967	\$1,662,390.00
1968	\$1,658,922.20
1969	\$2,107,500.00

The amount of the loans made to each of the Districts in each of these three years is set forth in Exhibit A attached hereto.

3. My examination disclosed that these loans were made on the basis of requests from District officials and the request in each case indicated that the funds were to be used for organization, administration or other union expenses, without further specification.

4. The records disclosed that when a loan was requested, International President W.A. Boyle issued instructions to International Secretary-Treasurer John Owens to issue a check in the amount requested and remit the funds to the District. Checks issued to make such loans were either deposited in the bank to the credit of the District or were cashed by an official of the District requesting the loan.

5. My examination of the records of the UMWA International did not disclose any documentary evidence concerning the disposition of these loaned funds.

6. Each District submits to the International a monthly report summarizing the receipt and disbursement of funds by the District. Nothing in the monthly reports serves to

verify that funds received by way of loan from the International were used for the purpose for which the loan was requested. Nor is there any other documentary evidence submitted by the Districts to the International indicating the disposition of the loaned funds.

/s/ Thomas F. Kane
Thomas F. Kane

* * *

[Filed March 5, 1970]

AFFIDAVIT

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

Henry A. Queen, being duly sworn, deposes and says:

1. I am the Chief, Branch of Elections and Trusteeships, Office of Labor Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C.

2. In the course of my official duties, I supervised the investigation which was conducted of the election of International officers held by the United Mine Workers of America in 1969.

3. In connection with the aforesaid investigation, the financial records maintained in the offices of the subordinate Districts of the United Mine Workers of America were examined in order to determine whether funds of

a labor organization had been expended to promote the candidacy of any person in the election in violation of section 401(g) of the Labor-Management Reporting and Disclosure Act of 1959.

4. The examination of such records disclosed numerous instances in which the records were not sufficiently maintained in order to permit a determination to be made whether funds had been expended in violation of section 401(g).

5. The financial records of District 2 disclosed that seven individuals described as organizers had been added to the payroll during the period between June 25 and July 1, 1969, and were still on the payroll at the time of the investigation. Checks were issued to these organizers for "organizing expenses" without any supporting vouchers or receipts to substantiate the purpose for which such expenditures were actually made.

6. The investigation disclosed that in February and March 1969, Secretary-Treasurer John Seddon prepared checks to each of four Executive Board members for District 5. These checks were cashed and the proceeds returned to Seddon, who states that he placed them in his safe deposit box in the Union National Bank, Pittsburgh, Pennsylvania. Thereafter, on July 14, 1969, Sedden deposited a sum equal to the total of the four checks (\$8,560) in the checking account of District 5 in the National Bank of Washington, Washington, D.C. The records do not indicate what disposition was made of these funds in the interim.

The records of District 5 disclosed that 19 presidents of local unions within the District participated in a six-week

"organizing" campaign in Butler and Mercer Counties, Pennsylvania. Each participant received from District funds approximately \$1,650 gross salary and expenses for the six-week period. The records of the District do not contain any receipts or other documentary evidence supporting the payments to these officers for expenses. Ten of the same 19 local union presidents made a subsequent six-week trip into the same areas, and were reimbursed at approximately the same rate, again without any documentary support of their expenses.

7. The financial records of District 12 disclosed that District Board member Jesse M. Ballard was reimbursed for mileage and expenses during a 5-day period in which he was hospitalized. In the same District, two other District members admitted that the mileage for which they claimed reimbursement consisted of "short miles."

8. Examination of the records of District 19 disclosed that "organizing" payments totaling \$19,970 were made to 23 members. The District records disclosed no documentation of any expenses incurred by these 23 members for which reimbursement could properly be made.

9. Investigation of the financial records for District 28 disclosed checks totaling \$3,180.84 were paid to union members to reimburse them for lost time and expenses in connection with a trip to Pittsburgh, Pennsylvania, and Washington, D.C. The payment was charged to organizing expenses. Subsequently, an International auditor discovered that the trip had been made for campaign purposes, and the money was then repaid to the District from funds of the campaign committee supporting the reelection of the incumbent officers. Another check in the amount of \$360 had been made payable to an International Representative in connection with the same trip, but this payment was undetected and no restitution was made.

The investigation disclosed that checks were drawn for advances and reimbursement of expenses to officials of District 28 without any supporting vouchers or documentations. On December 31, 1969, a check was drawn in the amount of \$5,000, payable to District Representative E. G. Gilbert upon the basis of his representation that the money was for organizing expense, without further itemization or documentation.

10. In District 29, examination of the financial records disclosed that between 1961 and 1968 the District received \$30,000 from Local 7086 and \$16,000 from Local 5997, allegedly for expenses previously paid by the District, but without any supporting records in the form of receipts or expense vouchers. In 1969, District 29 received an additional \$17,000 from Local 7086 and \$13,000 from Local 5996, again without any specific information or documentation concerning the purpose of the payments.

11. The financial records of District 31 disclosed that between April 15, 1969 and October 10, 1969, seven checks totaling \$9,700 were drawn to the order of the First National Bank, and one check for \$500 was drawn to the order of L. Clyde Riley, who is the Secretary-Treasurer of District 31, and were cashed. There was no documentation indicating the disposition of these funds.

/s/ Henry A. Queen
Henry A. Queen

* * * * *

[Filed March 5, 1970]

AFFIDAVIT

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

Hollis W. Bowers, being duly sworn, deposes and says:

I am employed as a special investigator by the Branch of Special Investigation, Division of Compliance Operations, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor.

In the course of my official duties, I participated in a financial investigation of the United Mine Workers of America (UMWA), 900 15th Street, N.W., Washington, D.C.

During that financial investigation, I examined expense accounts of the UMWA and determined that the UMWA has failed to require and direct its officers and employees to maintain adequate records to support disbursements for expenses, said records being necessary to determine the validity of the disbursements for expenses. My examination of the records with respect to disbursements to officers and employees for expenses indicated that vouchers were submitted and paid without any specification of mileage rates, and without any documentation of hotel and restaurant bills or other bills for which reimbursement was claimed.

My examination of the financial records of the UMWA concentrated primarily on 1967 and 1968 records. I also examined some of the records pertaining to 1969. The records for 1969 which I examined indicated that the

UMWA has continued to make disbursements for expenses without adequate supporting records.

I was informed by responsible officers of the UMWA that the UMWA had not, prior to January 1, 1970, issued instructions to its officers and employees concerning the submission of proper itemization and documentation of expense vouchers. I ascertained from a review of the minutes of the International that in January 1970, the International Executive Board issued instructions that mileage would be reimbursed at the rate of 12 cents per mile.

I have been informed by responsible officials of the UMWA that the UMWA has never undertaken an audit of expenses to determine the validity of the expenses claimed.

I have also examined the UMWA labor organization financial reports filed on United States Department of Labor Form LM-2 for the fiscal years ended December 31, 1967 and December 31, 1968. The LM-2 filed for 1967 shows \$864,479.00 disbursed to officers and employees as expenses. The LM-2 filed for 1968 shows \$1,070,930 disbursed to officers and employees as expenses. The LM-2 for 1969 has not yet been filed.

/s/ Hollis W. Bowers
Hollis W. Bowers

* * * * *

[Filed March 5, 1970]

[EXHIBIT A TO MOTION FOR PRELIMINARY
INJUNCTION]

UMWA LOANS
TO DISTRICTS DURING YEAR 1967

<u>DISTRICT</u>	<u>AMOUNT</u>
1	\$80,000
2	330,000
3	10,000
4	35,000
5	140,000
6	5,000
7	25,000
9	60,000
10	1,000
11	25,000
12	15,000
15	40,500
19	384,290
20	25,000
21	2,500
23	10,000
26	5,500
27	10,000
28	125,000
30	273,600
31	60,000
	<u>\$1,662,390</u>

[Filed March 5, 1970]

UMWA LOANS
TO DISTRICTS DURING YEAR 1968

<u>DISTRICT</u>	<u>AMOUNT</u>
1	\$72,000
2	315,000
3	20,000
4	50,000
5	180,000
6	30,000
7	30,000
9	83,300
10	4,000
11	20,000
12	15,000
15	35,000
19	340,599.20
20	30,000
21	5,000
22	10,000
23	5,000
26	2,000
27	17,000
28	50,000
30	264,023
31	81,000

\$1,658,922.20

[Filed March 5, 1970]

UMWA LOANS
TO DISTRICTS DURING YEAR 1969

<u>DISTRICT</u>	<u>AMOUNT</u>
1	\$20,000
2	480,000
3	20,000
4	120,000
5	360,000
6	115,000
7	5,000
9	40,000
10	13,000
11	20,000
12	70,000
14	5,000
15	30,000
17	40,000
19	183,000
20	25,000
21	10,500
23	40,000
25	150,000
30	109,000
31	<u>252,000</u>

\$2,107,500

[Filed October 2, 1970]

**MOTION OF MIKE TRBOVICH, INDIVIDUALLY
AND AS CHAIRMAN OF AND ON BEHALF
OF MINERS FOR DEMOCRACY, AN UNIN-
CORPORATED ASSOCIATION, FOR LEAVE TO
INTERVENE AS A MATTER OF RIGHT UNDER
RULE 24(a) F.R.C.P., OR, IN THE
ALTERNATIVE, FOR PERMISSION TO
INTERVENE UNDER RULE 24(b) F.R.C.P.**

Come now Rauh & Silard, attorneys for Mike Trbovich, and move this Court for leave to intervene in the above-entitled action and to file his Complaint attached hereto as Exhibit A. In support of this Motion, applicant shows as follows:

**I. WITH RESPECT TO THE FIRST
CAUSE OF ACTION**

1. On December 9, 1969, there was held an election of International Officers in the United Mine Workers of America (hereinafter referred to as "UMWA").
2. On January 20, 1970, Mike Trbovich, a member in good standing of the UMWA, filed a complaint with the Secretary of Labor, challenging the results and conduct of the election. (A copy of that complaint is attached hereto as Exhibit A.) See also paragraph VI (c) of the Secretary's complaint.
3. On March 5, 1970, the Secretary of Labor filed the Complaint in the instant proceeding, seeking an order "declaring the election held by the defendant to be null and void" and "directing the conduct of a new election for all constitutional officers under the supervision of the plaintiff."

4. On April 1, 1970, in Clarksville, Pennsylvania, the organization Miners for Democracy was formed for the purpose of bringing about reform in the UMWA; its goals include the holding of democratic elections and the restoration of sound fiscal management of the UMWA's assets.

5. As an individual UMWA member and as National Chairman of Miners for Democracy, applicant has a direct and substantial interest in the subject matter of this action and is so situated that the disposition of this action and the terms of any order entered will as a practical matter impair or impede his ability to protect that interest.

6. Applicant's interest is not adequately represented by the parties to this action. (See letter to Senator Harrison A. Williams, Exhibit C-1; letter from Senator Williams to Senate Labor Subcommittee members, Exhibit C-2; and a memorandum prepared and distributed by the Department of Labor, Exhibit C-3.)

II. WITH RESPECT TO THE SECOND CAUSE OF ACTION:

7. On December 4, 1969, applicant herein, Mike Trbovich, and eleven other members of the UMWA filed a Complaint against defendant herein, UMWA, and its three principal International Officers, W.A. Boyle, George J. Tittler, and John Owens, "For an accounting, restitution and damages." The Complaint alleges that "the individual defendants have violated the fiduciary duties set forth in Section 501(a) of the [Labor-Management Reporting and Disclosure Act of 1959]." That proceeding (Civil Action No. 3436-69) is presently pending before this Court. A copy of the Complaint therein is attached hereto as Exhibit D.

8. In Cause II of the instant Complaint the plaintiff Secretary of Labor seeks an order "directing and compelling the defendant to maintain [financial and other] records, as required by Section 206 of [the Labor-Management Reporting and Disclosure Act] and "enjoining the defendant, its officers, members, agents, servants, employees, attorneys and all other persons in active concert . . . from violating the provisions of 206 and permanently and during the pendency of this action restraining defendants and its agents . . . from violating the provisions of 206."

9. As an individual UMWA member and as National Chairman of Miners for Democracy, applicant has a direct and substantial interest in the subject matter of this action and is so situated that the disposition of this action and the terms of any order entered will as a practical matter impair or impede his ability to protect that interest.

10. Applicant's interest is not adequately represented by the parties to this action. (See Exhibit C-3.)

11. There are common questions of both law and fact in the intervenor's complaint (Exhibit A) and in both of the causes of action in the original Complaint filed in this matter by the Secretary of Labor on March 5, 1970.

WHEREFORE, Mike Trbovich prays this Court grant him leave to intervene in both causes of action in this proceeding as a matter of right under 24(a) of the Federal Rules of Civil Procedure, or, in the alternative, that he be permitted to intervene under Rule 24(b) of the Federal Rules.

Respectfully submitted,

Joseph L. Rauh, Jr.

John Silard

Elliott Lichtman

Clarice R. Feldman

Joseph A. Yablonski

Rauh & Silard

1001 Connecticut Avenue, N.W.

Counsel for Intervenor

[EXHIBIT A TO MOTION FOR LEAVE TO INTERVENE]

COMPLAINT OF INTERVENOR

Come now Rauh & Silard, attorneys for the Intervenor, Mike Trbovich, and file this Complaint under Titles I, II, IV, V, VI of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as "LMRDA") 29 U.S.C. 401, *et seq.*

1. Intervenor-Plaintiff, Mike Trbovich, whose address is R.D. No. 1, Box 175, Clarksville, Pennsylvania, is a member in good standing of the United Mine Workers of America (hereinafter referred to as "UMWA") and its Local Union 6330 and is the National Chairman of Miners for Democracy, an unincorporated association formed on April 1, 1970, to bring about reform in the UMWA, and, in particular, to democratize its election procedures and to promote sound fiscal management of the UMWA's assets.

2. Intervenor adopts and incorporates herein by reference all of paragraphs I, II, III, IV, V, VI, VII, VIII, and IX of the First Cause of Action in the original Complaint herein filed by the Secretary of Labor on March 5, 1970.

3. In addition to the jurisdictional allegations contained in the original Complaint, this Court also has jurisdiction of this matter under Section 102 of LMRDA (29 U.S.C. 412), Section 201 of LMRDA (29 U.S.C. 431), Section 501 of LMRDA (29 U.S.C. 501) and under the District of Columbia Code, Section 11-521 (1967 ed.).

4. In addition, Intervenor asserts that the following allegation should be inserted in the Complaint in paragraph VIII (c):

(iv) Thousands of members were required to vote in the more than 500 local unions of the UMWA which exist in violation of the UMWA Constitution which practice may have influenced the outcome of the election;

5. Intervenor further asserts that the following allegation should be inserted in the First Cause of Action in the Complaint as VIII (e):

(e) Section 401(e) of the LMRDA (29 U.S.C. 481(e)) was violated in that the President of the UMWA improperly interfered with the rights of UMWA members to vote for the candidates of their choice when, during the election campaign period, by trick or fraud or by collusion with the employers' representative on the UMWA (Bituminous) Welfare and Retirement Fund, he engineered a \$30,-000,000 annual increase in pensions to retired miners which increase was designed and intended to influence and may have influenced the votes of 70,000 pensioned union members and, therefore, the outcome of the election and which jeopardized the continued solvency of the Fund.

6. Intervenor adopts and incorporates herein by reference all of paragraphs I, II, III, IV, and V of the Second Cause of Action in the original Complaint filed by the Secretary of Labor on March 5, 1970.

7. Intervenor, in addition, asserts that the following allegation should be inserted as an additional paragraph in the Second Cause of Action, paragraph VII:

Defendant has failed and continues to fail to provide and make available to its members adequate information about and record of its finances, including its books, records and accounts which it is required to do under Section 201 of the Act (29 U.S.C. 431) and under Article IX, Section 32 of the UMWA Constitution.

8. Intervenor adopts and incorporates herein by reference all of the paragraphs in the prayer for relief contained in the original Complaint filed by the Secretary of Labor on March 5, 1970.

9. In addition to the matters contained in the prayer for relief in the original Complaint, Intervenor includes the following paragraphs:

(f) directing and compelling the defendant to immediately disband all local unions which do not comply with the requirements of the UMWA's Constitution, and to require the transfer of all members of such locals to local unions which exist in compliance with the UMWA Constitution;

(g) appointing and installing a Board of Monitors to oversee and approve the maintenance of books, records and accounts and the receipts and expenditure of funds and preservation of the UMWA's assets until such time as the Court believes that the UMWA has instituted and will maintain proper record-keeping and accounting procedures and that the assets of the UMWA are not in danger of being dissipated;

(h) rule that defendant's President breached the fiduciary duty he owed to all UMWA members by raising bituminous pensions in order to benefit himself and other incumbent International Officers and order defendant to publish this ruling in a manner adequate to dissipate the effect of this increase on the pensioned voters;

(i) establish rules for the conduct of a new election and enforce such rules for the new election or appoint a panel, to be paid out of UMWA funds, to establish and enforce fair election rules for such election;

(j) grant to the intervenor reasonable attorneys' fees and costs;

10. Paragraphs (f) and (g) of the original Complaint filed by the Secretary of Labor on March 5, 1970, should, respectively, be renamed paragraphs (k) and (l).

Respectfully submitted,

Joseph L. Rauh, Jr.
John Silard
Elliott Lichtman
Clarice R. Feldman
Joseph A. Yablonski

Rauh & Silard
1001 Connecticut Avenue, N.W.
Attorneys for the Intervenor

[EXHIBIT B TO MOTION FOR LEAVE TO INTERVENE]

TELEGRAM

JANUARY 20, 1970

Sent - 3:37 p.m.

THE HONORABLE GEORGE P. SHULTZ
SECRETARY OF LABOR
WASHINGTON, D.C.

MIKE TRBOVICH, VICE PRESIDENT OF LOCAL UNION 6330 OF UNITED MINE WORKERS AND CAMPAIGN CHAIRMAN FOR YABLONSKI-BROWN TICKET, HAS ASKED ME TO FORWARD THIS MESSAGE TO YOU QUOTE I HEREBY CHALLENGE THE DECEMBER 9 UMWA ELECTION FOR REASONS STATED IN YABLONSKI LETTER TO INTERNATIONAL TELLERS AND APPENDICES ATTACHED THERETO AND IN RAUH LETTER TO YOU DATED JANUARY 13TH.' I URGENTLY REQUEST A DEPARTMENT OF LABOR INVESTIGATION OF ELECTION BASED ON THOSE LETTERS. MASSIVE VIOLATIONS OF LAW AND UMWA CONSTITUTION COMMITTED BY UMWA OFFICERS AND THOSE WORKING WITH THEM CLEARLY AFFECTED RESULTS OF ELECTION. NEW NOMINATIONS AND NEW ELECTIONS ARE ESSENTIAL TO A CLEAN-UP OF THIS UNION UNQUOTE.

JOSEPH L. RAUH, JR.

[EXHIBIT C-1 TO MOTION FOR LEAVE
TO INTERVENE]

May 26, 1970

The Honorable Harrison Williams
Chairman, Senate Labor Subcommittee
Suite 4320, Senate Office Building
Washington, D.C. 20510

Dear Senator Williams:

On May 4, 1970, the Secretary of Labor, George P. Shultz, his Assistant, Willie J. Usery, and his Solicitor, Laurence H. Silberman, testified before your subcommittee in connection with the Department's activities concerning the United Mine Workers of America, with particular emphasis on the recent UMWA election. That same day we requested by telegram and telephone the opportunity to respond and rebut the guilt-ridden and baseless statements made by the Secretary and his associates. We were denied this opportunity. Having been denied the right to respond promptly in person, we wish to insert in the record our review of the Secretary's statement and indicate for the subcommittee its most serious inaccuracies.

Refusal to conduct pre-election investigation. Let us begin with the Secretary's continued insistence that the Labor Department's policy of refusing to conduct an investigation during the course of an election is a proper one. That policy flies in the face of the Secretary's admissions concerning the "broad language of section 601" (p. 2) and the decisions of "two courts of appeal [that] have held that the broad investigatory authority under

Title VI is not limited by the express procedural requirements of section 402" (p. 4). These damaging admissions conclusively establish that the Secretary's refusal to investigate in the pre-election period had no basis in the law (LMRDA) or in the court decisions interpreting it.

Indeed, the primary justification for the Secretary's inaction is his own previous inaction and that of his predecessors since 1959. The other asserted reason, stripped of the obfuscating rhetoric, is that to enforce the law — to conduct an investigation — might injure or harm the party accused of breaking the law. The Secretary's fear that an investigation might help or hurt candidates is no reason to decline to carry out his responsibilities. The emphasis should be placed on screening the allegations and charges to discard the baseless and frivolous ones, and to investigate those with merit. A policy against pre-election investigation might make some sense in the ordinary case; an inflexible rule against pre-election investigation in the face of the UMWA bosses' massive violations of law makes no sense at all. The Secretary's investigatory presence would insure greater compliance with the law and no accusatory proceedings would be required until after the returns are in. Thus, the Secretary's fear that his action "would almost surely influence the outcome of the election" (p. 6) is a hollow one. It is simply a boogie man erected to justify a bureaucratic indifference that contributed to the murder of the Yablonski family. Contrary to the Secretary's suggestion that the Act must be amended to permit pre-election investigations, it is clear from the foregoing and the general intent of the legislation to protect union members' rights and promote union democracy, that the Act need not be amended so much as the Secretary must be directed to perform the responsibilities Congress imposed on his office.

In dealing with his inaction in the UMWA election case, the Secretary states that "the only purpose of such a pre-election investigation in this case would have been to publicize the existence of violations of the statute" (p. 6). But that was not the reason we requested an investigation; we have said since the outset that a *federal presence* would have prevented further violence and other daily violations of the law. Only through the most tortured reasoning could the Secretary arrive at the conclusion that because the UMWA had broken the law — and that Mr. Yablonski's pre-election suits conclusively demonstrated this — Mr. Yablonski's requests for an investigation should not have been heeded. The Subcommittee should have recognized this as sophistry, but the Secretary was not even questioned on this matter.

Violence. The discussion of violence during the campaign further demonstrates the Secretary's lack of candor. On February 21, 1970, we wrote to the Secretary describing in detail much of the violence that occurred during the course of the campaign. The letter ended with the following request:

"We know we cannot affect your decision, but we do have the right as American citizens to demand answers to our verified evidence of violations of law. *We ask that you give us an answer point by point to each illegality we have charged.* We ask you to take each such illegality separately and tell the public whether it was proven, erroneous, or not investigated."

To this day, we have never received a seriatum disposition of our verified charges. We have yet to be informed of the results of any investigations or even to be informed

that there were any investigations on most of these incidents, despite the Secretary's assertion that "[e]very one of those allegations was investigated" (p. 7).

The testimony on the two incidents of violence which were allegedly investigated is illuminating. Contemporaneous with the events in Shenandoah, the Shenandoah Evening Herald carried a banner headline, pictures and a very descriptive article and editorial relating to the manner and fashion that the meeting was broken up. Subsequently, we obtained affidavits which corroborated the impartial newsmen's story. In sum, they disclose that a union meeting of union members supporting the candidacies of Yablonski and Brown was scheduled for the Shenandoah High School at 3:00 o'clock p.m. on June 29, 1969. *Before* the meeting started, International and District representatives, including John Karlavage and Boley Overa, led a group of shouting, placard waving individuals into the school auditorium. They prevented the meeting from being held and threatened the old pensioned miners and ordered them to go home. The attached newspaper story and affidavits speak for themselves. The Secretary's indication that the law permits this type of conduct is so incredible that it should easily have been discredited by the committee.

No one paragraph in the Secretary's 22 page statement more clearly illustrates the manner in which the federal agencies combine *not* to enforce the law than the one on page eight where the Secretary describes the events at Springfield, Illinois on June 28, 1969 where Mr. Yablonski was brutally assaulted and knocked unconscious. Within a day after the incident the Justice Department through Henry Peterson was given a factual summary of what had occurred. In another day or so, the names of eight people

who attended the meeting were also given to him. Neither Mr. Yablonski (to our knowledge) nor anyone else was ever interviewed at that time concerning this incident.

On December 23rd, Mr. Peterson informed Mr. Rauh that the F.B.I. had been unable to determine who the assailant was, and that the matter had been dropped. Secretary Shultz, nevertheless, testified that the assailant had been identified, that he stated that he had struck Mr. Yablonski on the chin from the front* and "that it was strictly a spontaneous action and that he was not paid or otherwise induced to commit the assault . . ." (p. 8). A phone call to the Department of Justice after the Shultz testimony revealed that the assailant had indeed been identified but not until the investigation was reopened *following the murders*.

But neither Mr. Rauh nor anyone in the Yablonski family or anyone connected with the Yablonski campaign has ever been interviewed or consulted during this investigation. Apparently the Labor Department feels compelled to accept the explanations of the perpetrators of union crime without reservation. The testimony of Messrs. Usery and Silberman on this point are illustrative of their utter refusal to discuss this matter with Mr. Yablonski, his sons or campaign aides. The Justice Department was initially informed that the Springfield meeting had been set up by

* The F.B.I. interviewed Emil Sposato, M.D., the doctor who examined Mr. Yablonski, the night of the incident. But neither the F.B.I. nor Labor Department ever interviewed or asked to see the report records and notes of the treating physician, Robert Schwartz, M.D. Doctor Schwartz has unequivocally stated that Mr. Yablonski was struck on the back of the neck. Nor has the treating neurologist, Doctor Stahl, ever been interviewed to our knowledge.

a Mr. George Morris, Jr., who was erroneously believed to be a leader of the anti-Boyle forces in Illinois. Only a dozen or so local union officials attended the meeting in a hotel room at the State House Inn. It was not a "rally" (as Mr. Usery stated, p. 666), but was a preliminary, introductory session with a handful of local leaders. Though Mr. Yablonski was led to believe those in attendance favored his candidacy, he was not warmly received. Thus, when Mr. Usery states the group was "Yablonski supporters", he is again wrong. Finally, his statement about the substance of the discussion - voting rights of pensioners - is drawn directly from a Tony Boyle press release. Mr. Yablonski never at any time, let alone in the company of a dozen hostile Boyle supporters, maintained that pensioners should not vote. Either Boyle propounded this lie for the assailant which the Secretary readily accepted, or Mr. Boyle has access to the Department's investigatory files. Nevertheless, even the contrived set of facts described by Shultz and Company makes out a *prima facie* case of a violation of Section 610 rather than being deserving of the white-wash applied by the Labor Department.

But more significantly, after the Shultz testimony the Labor Department admitted they did not know that George Morris, Jr., the man who set up the meeting, had received more than \$1500 from UMWA District 12 (Illinois) last year. Nor did they know that four of the other men that Mr. Yablonski identified as attending the meeting received more than \$500 each from District 12 in 1969.* Mr. Chairman, the investigation of the Springfield matter was

* Erne Bigham, \$548; Robert Elmore, \$755.45; Bernard Martin, \$1,115.85; Jack Ponsetti, \$530.

a massive cover-up operation. It indicates that in the enforcement of this law (LMRDA), the Government accepts the word of the attackers and does not even interview the victim.

Blatant misrepresentations by the Secretary. Needing an opportunity to cast doubt on the motives of those critical of his performance, the Secretary next resorts to an outright lie. Our pleas to have him commence an investigation 'are regarded as "appeals . . . to the Department . . . [for] assistance in [the] campaign" (p. 8). The only evidence cited by the Secretary to support this assertion is that in the meeting of December 15, after the election was over, we "stated that an early investigation was necessary to maintain the campaign's momentum" (pp. 8-9). The word "momentum" was Mr. Silberman's; it was used by him to describe our contention that a prompt investigation was necessary because readily available sources of information would dry up after the official results of the election were made known. Local union members and officers would be more cooperative if they believed the election was still hanging in the balance, that reprisals might not be visited on them for cooperating. Though Solicitor Silberman used this word "momentum" in the presence of no less than a dozen people, his brazen effort to distort the word, as *he* used it, is conduct which even the Labor Department should find reprehensible.

The Secretary tries to but cannot justify his conduct by saying that both sides found fault with his performance (p. 9). The matters contained in the Department's November 26, 1969 Summary Report of Investigation, though sharply criticized by UMW incumbents, were not earth shaking; most were, in fact, public knowledge. If

this was the sum total of six months investigative work, the investigation uncovered little.

The same can be said of the post-election investigation. The manner in which the Secretary glosses over the \$30 million purchase of pensioner votes shocks even our by now dulled senses. Our research has uncovered nothing in the history of the LMRDA which compels a restrictive reading of the words "improper interference" with an election, as used in Section 401(e). Indeed, basic principles of statutory construction require that the words be broadly defined; otherwise they are redundant with the other words in the series: "subject to penalty, discipline, or improper interference or reprisal of any kind . . ." Apparently recognizing the shallowness of this line of reasoning, the Secretary trots out another boogie man — that a proper reading of the statute might imperil collective bargaining during an election campaign (pp. 14-15). We urge the committee to see through this transparent effort by the Secretary to evade his responsibility for enforcing the Act. In no way could the Secretary bring into "question any agreement negotiated . . . during an election campaign." The agreement itself could not be set aside; only the election could be set aside and it should not unless improper motive (an intent to influence the election by aiding an incumbent) could be demonstrated — a fact highly unlikely since most unions, unlike the UMW, deal at arms' length with employers. The Secretary's vague generalizations concerning the soundness of the increase are in no way related to any complaint to that effect. We have never contended that the soundness of the increase was subject to his or anyone else's review. It is merely illustrative of the haste and political motivation behind the increase itself.

The Secretary's position regarding bogus locals is but another example of blindly accepting the word or position

of the UMW. Unwilling to make a decision concerning this matter, the Secretary has refused to examine the plain language of the UMW Constitution, which states that "local unions shall be composed of ten or more workers . . . working in or around coal mines" and "[i]f any mine or colliery is abandoned . . . the [local union] charter and all its moneys . . . shall be taken over by the International Union [and] . . . any remaining members . . . given transfer cards." Despite statements like Judge Hart's — "they apply the Constitution when they want to, they don't when they don't" — the Secretary accepts the weak explanation that the union has always interpreted the constitution to permit non-functioning locals to exist. Mr. Chairman, is it a defense to an unconstitutional act that one has always disregarded the constitution? Only Secretary Shultz could answer this in the affirmative.

The most incredible display of naivete is his concluding statement on the bogus local question that "even if there had been a technical violation [of the Constitution], it could not have had any effect on the outcome of the election" (p. 17). Apparently, the Secretary believes there is no difference between 1250-1300 locals voting in an election and about 700 locals voting. Apart from the logistics of supplying observers, etc., to about half of the number of locals that supposedly voted, there was the additional problem of finding the polling places of these locals, and the myriad of difficulties of guaranteeing a secret ballot vote once they were found and observers sent. Worst of all, old pensioners were the prey for the hired Boyle men that "ran" the elections in these "bogus" locals.

The other remaining matter which the Secretary left out of the "election case" was the massive group of dust committeemen, organizers, etc., that were added to the

UMW payroll in 1969 at an estimated cost of more than \$500,000. First, let us deal with the question of "organizers", since Mr. Usery suggested that the union "had stepped up its organizing at that time" (p. 680). Aside from the union's bald assertion, where does Mr. Usery get his facts? From Lou Antal, who testified before this subcommittee that he was paid \$400 a week, but did no organizing? From Tony Dovshek, who told the Labor Department investigators that he was paid for "organizing" though he was in Canada fishing? How many new mines were organized last year? At what mines were these organizing drives conducted? How many NLRB elections were held in comparison with prior years? Why were so many organizers hired in Mr. Yablonski's Pennsylvania home district (which is predominantly organized) when the most substantial unorganized territory is in Eastern Kentucky, where none were hired? Could it be because of the torrid election contest in Pennsylvania whereas Mr. Yablonski hardly campaigned in Kentucky for fear of violence?

The same applies to "dust committeemen". What did they do? They weren't allowed inside the mines to check the dust; and even if they were, they had no equipment to monitor it. Why were six full time dust committeemen added to the payroll in District 4 (which borders Mr. Yablonski's home) at a cost of \$70,000, while District 20 (Alabama), which has more mines and more active miners than District 4, had no dust committeemen? Neither did Utah or Colorado. Was it because there was no dust in the mines in those states or because there was no real election campaign in those states? Why are some of these all important dust committeemen being laid off and required to return to work after the election? If these men could not get inside the mine, what did they do — educate the men that dust exists in coal mines? Why is it that

regardless of the designation given to employees hired in 1969, they come from the coal areas where Boyle had the stiffest election fight (West Virginia, Pennsylvania, Ohio)?

Then there is the separate question of lobbyists (contrary to the Secretary's testimony, the "dust committeemen" were not lobbyists). All were apparently paid two or three times their lost salaries for participating in lobbying junkets. The fact that most of these novice lobbyists were pro-Boyle boosters was apparently of no consequence to the Secretary.

Finally, there is the argument that many of these 1969 hirees were put on the payroll before Mr. Yablonski announced his candidacy (p. 18), as though that would legitimize the practice. But the Secretary should know that other anti-Boyle candidates had surfaced early in 1969, and certainly Boyle and Company were aware that nominations and an election would be held (regardless of who the opposition would be) during the year. The Secretary seems to say that any union incumbents may hire at exorbitant salaries as many partisans as they wish at union expense, and that so long as they appear to perform some type of work — the Department will not interfere with their freedom to campaign for their benefactors. We trust that the subcommittee does not share this construction of the Act.

The Secretary seems to go out of his way to characterize us as being uncooperative in not making available the names and addresses of Mr. Yablonski's election observers (p. 19). Having failed in his duty to investigate, he now seeks to shift the blame to those who begged for action. Again, the Secretary must resort to a distortion of the record to serve his purposes. The facts are that sometime in mid-January a caller from the Department asked for the names and addresses of our

observers. The Department was furnished with hundreds of observer reports, but there was also a small card catalogue containing additional names and the addresses of observers assigned out of Mr. Yablonski's Washington D.C. Campaign Headquarters. Mrs. Clarice Feldman informed the Labor Department that the card catalogue was in Mr. Yablonski's home, which was under guard by the FBI and state authorities. Since no family member was to be admitted, Mrs. Feldman advised the Department to check with the authorities. Apparently this was never done; nor was the request ever renewed after the house was finally released. Yet, the Secretary castigates us for his Department's own failure.

The Yablonski murders. The final two pages of the Secretary's statement deserve special mention. The Secretary says this was just another election campaign, and then in an effort to publicly cleanse his conscience he says twice that the murders had nothing to do with the election. Who is the Secretary of Labor to make such an assertion? Has he read the indictments returned by the Cleveland Grand Jury? Is he aware that one count deals with a conspiracy to violate a union member's rights, and that another involves an obstruction of justice to prevent Mr. Yablonski from testifying before a UMW Grand Jury Probe in Washington, D.C.? Is he aware that Mr. Silas Huddleston, President of a Local Union of the UMWA in LaFollette, Tennessee, has been indicted on these charges? Is he aware that the United States Attorney in seeking the grand jury indictment had to have evidence of probable cause and that the grand jury had to find that probable cause to indict? While no one questions that all five of the indicted persons are innocent until proven guilty, the fact remains that all the evidence to date points to a clear connection between the murders and the election through the participation of Huddleston (and another Local Union President indicted for perjury); the presumption of innocence does not

require an administrative official to reject known facts. Indeed, the real remaining question is not whether this was an election-connected offense, but just how high in the union the culpability runs. What Secretary Shultz did in his testimony was to challenge the F.B.I., the United States Attorney and the Grand Jury; only a guilt-stricken man would deliberately undercut the enforcement efforts of his own Government.

* * * *

Before concluding this statement, Mr. Chairman, we would like to call to your attention one paragraph from our letter of February 21, 1970, to Mr. Shultz. That paragraph reads as follows:

"Mr. Secretary, you and your advisers are apparently the only people in the whole United States who do not know how rotten things are in the Mine Workers. Why do you refuse to see what even a blind man could not miss? Is it the influence of Mr. Usery who denounces the Yablonski group with allegations that they accepted money from Walter Reuther and the UAW (a false statement which Joseph A. (Chip) Yablonski under oath denied as "garbage" before the Senate Labor Subcommittee)? Is it your lawyers' prattlings about "volunteerism" in the labor movement, and Mr. Silberman's desire to play the wheeler-dealer role with the UMWA? Or is it your own personal desire not to take any steps of which the powerful UMWA might not approve? We do not know your motivation for inaction and apathy in the face of tyranny and violence, but there is one thing we do know: We shall keep up this fight, whatever you do, because the American people will not forever tolerate bureaucratic indifference to

UMWA corruption any more than they would in the case of the Teamsters. The Yablonski supporters will *never* let you sweep this mess under the rug."

Sadly enough, Mr. Shultz's testimony was just such a deliberate effort to do what we feared - to try and sweep the mess of the United Mine Workers of America under the rug. You and your Subcommittee have the opportunity to prevent this from happening. We have been disappointed in the investigation to date, but we hope and trust that you and your Subcommittee will soon undertake a real investigation in the great tradition of the United States Senate.

In sum, Mr. Chairman, we are shocked and appalled at the Secretary's distortions, innuendoes, and fabrications. It is frightening to believe that such a high public official would resort to such conduct to justify his unjustifiable actions. Your Subcommittee unfortunately did little to clear the air while Messrs. Shultz, Usery and Silberman were before you. At least you could have required the Secretary and his associates to go under oath as have all other witnesses.* But, in any event, we reiterate our request to appear before the Committee, hopefully, *simultaneously with the Secretary*, so that the real facts can be made known. In the event the Secretary should decline a new invitation, we ask that you recommend to the President that all of the Mine Workers' investigations be conducted by a crime task force under the jurisdiction of the Attorney General. Surely, you would agree that Mr. Shultz and the Labor Department have demonstrated an unwillingness to enforce the law which Congress entrusted to them. They should not be permitted to impede and frustrate the work of the Justice Department

* To highlight this failure, we have sworn to this rebuttal.

and the F.B.I., which appear to be genuinely concerned with cleaning up this union.

/s/ JOSEPH L. RAUH, JR.

/s/ JOSEPH A. ("CHIP") YABLONSKI

[Notarial Certification, dated May 25, 1970]

[EXHIBIT C-2 TO MOTION FOR LEAVE TO INTERVENE]

UNITED STATES SENATE
COMMITTEE ON LABOR AND PUBLIC WELFARE
WASHINGTON, D. C. 20510

June 24, 1970

I am submitting to each Labor Subcommittee member this status report on our activities respecting the United Mine Workers of America and related matters. This report comes at a time of increasing problems in this general area and a rapid development of a complex of conditions troubling many of the workers in our Nation's coal fields.

These conditions — which have been reflected in walk-outs by a number of coal miners in several states — include dissatisfaction with the pace of the Government's various investigations and lawsuits involving the United Mine Workers of America, and with the administration of the Federal Coal Mine Health and Safety Act of 1969; disapproval of the recent nomination of Dr. J. Richard Lucas to be Director of the Bureau of Mines; and the assertion of various coal miner grievances against the UMWA.

UNITED MINE WORKERS INVESTIGATION

Immediate priority under S. Res. 360 has been given thus far to the circumstances surrounding the UMWA election of December, 1969 — an area in which we are exercising a legislative oversight function with respect to the Labor and Justice Departments' administration of the Labor-Management Reporting and Disclosure Act. We are, however, also actively pursuing the broad welfare and pension plan study authorized by S. Res. 360, including at present the preparation, with the minority staff, of a detailed questionnaire to be sent to a large sample of pension plan administrators.

Secretary of Labor Shultz appeared before the Subcommittee on May 4 to report on actions taken by his Department with respect to the UMWA election, as well as other matters concerning the UMWA. His appearance followed the filing of suit to set aside that election. This suit, which resulted from a 200-man investigation that began on January 8, was based on several grounds — including the use of Union funds, publications and facilities on behalf of the incumbents, and various statutory violations relating to the balloting process. In subsequent pleadings, the Secretary has referred to several hundred instances of improper activity. In addition, the Secretary has sought an injunction to prohibit further expenditures of Union funds without the maintenance of proper records to substantiate the actual use made of such funds.

If properly pursued, this lawsuit should result in some of the questions raised by the UMWA election being resolved through judicial proceedings. However, under present circumstances, many of the allegations we have received concerning this election will not be resolved judicially, for the Secretary reported to us that certain charges — which were investigated either by the Labor Department or the FBI — could not be substantiated. He further reported his

view that certain other charges did not constitute violations under current interpretations of the law.

In view of continuing public concern over charges that were not substantiated by the prior investigations, I believe that investigation in those areas by this Subcommittee is essential, and the work of the staff has been directed accordingly. The subjects referred to include charges of violence or threats of violence, as well as various allegations of misuse of Union funds — including the hiring of dust committeemen, organizers and others for Union political campaign purposes. In the course of their inquiry into such matters, our investigators have also been receiving evidence of violations which appear not to have been covered by either the Labor Department or the FBI, and these, too, are being thoroughly explored. Our investigative activity has included the issuance of a number of subpoenas seeking financial records and information from officials of the UMWA, the National Bank of Washington, and various persons connected with the Boyle campaign.

At the present time, eight professional staff members, under the direction of Salvatore J. Arrigo, a former deputy assistant general counsel of the NLRB, are working on our investigation. In addition to field investigators currently examining election-related charges, the staff includes two investigative-auditors who have been examining the books and records of the UMWA Welfare and Retirement Fund, and two actuaries who have been making an actuarial study of the Fund in order to determine the impact of the pension increase which W. A. ("Tony") Boyle put through at the beginning of his campaign and which has figured prominently in our earlier hearings. Commitments are currently being completed to bring additional investigators on board.

In our inquiries, we have endeavored to take full account of other investigative activity, as well as a great deal of pending litigation involving the UMWA or its Welfare and

Retirement Fund, in order to obtain a maximum amount of background information, avoid fruitless duplication of effort, and insure that our own efforts do not interfere with the ongoing investigations which the FBI is conducting in several areas.

I should point out that Secretary Shultz's report to the Subcommittee raises a number of questions of statutory interpretation or enforcement policy, concerning which I find myself in disagreement:

1. One matter of major concern, of course, has been the refusal of the Department to investigate, prior to the murder of the Yablonski family, the allegations of improper activity which had been repeatedly brought to its attention during the period from July through December of 1969.

In his report to the Subcommittee, the Secretary took the position that, except for allegations of violence, it is legally contrary to the Labor-Management Reporting and Disclosure Act for the Department to investigate possible violations of the law during an election campaign. I believe the Secretary's view is erroneous, and represents a reversal of the legal position held by the Department since the Act's inception in 1959. Section 601(a) of the Act expressly states that the Secretary has power to investigate whenever he believes it necessary to determine whether any person has violated or is about to violate the Act. While I can understand the Department's long-established *general policy* of not conducting such investigations in advance of an election, it seems to me this policy permitted an investigation when information brought to the Secretary's attention indicates a pattern of irregularities which, if allowed to continue, will inevitably taint the election. In such cases, even though the Secretary could not actually go to court until after the election, a display of the Department's concern, manifested through investigative activity, may well serve to discourage continued violations of the law, as well as preserve evidence for later use in court, should that be

necessary. I do not believe Congress intended that the Secretary's hands should be tied in the fashion of the Secretary's current interpretation.

2. One of the election charges with which I have been particularly concerned in our prior hearings, relates to the \$30 million annual pension increase engineered by W. A. ("Tony") Boyle at the beginning of his campaign last June. This increase was not obtained through a collectively bargained increase in employer contributions. Rather, it was to be met from the reserves of the UMWA's Welfare and Retirement Fund - a Fund which was already scarcely holding its own in terms of annual income and outgo. This manipulation of the Fund, which Boyle relied on repeatedly to appeal for pensioner votes during his campaign, seems to have been one of the most decisive factors in the UMWA election. A Subcommittee staff analysis, based on data subpoenaed from the Union, indicated 93% of the voters in the all-pensioner locals voted for Boyle. Since the pensioners comprise 70,000 out of a total UMW membership of 185,000, the substantial impact on the election is self-evident.

It appears that the Labor Department did not adequately appreciate the significance of this situation, and readily concluded that no violation of the Act was involved. In my view, however, the increase in the pension payments brought about by Mr. Boyle for obvious political purposes, represented a substantial and improper interference with the electoral process within the meaning of the statute (Sec. 401(e)).

I have felt this situation to be of sufficient importance to direct an actuarial study of the Fund in order to project the effect this pension increase would have. The actuaries who have undertaken this work for the Subcommittee have analyzed available data pertaining to the Fund's future royalty income, as well as its projected payments

for future medical, death and pension benefits. On the basis of their analysis thus far, I believe their final report will be found alarming by the thousands of miners who are dependent upon the continued solvency of this Fund.

3. In March, 1969, the Department began a financial investigation of the UMW and found that funds were being spent by Union officials without maintaining the required underlying records which would document or permit verification of the authenticity of such expenditures. Again, when the Department undertook to investigate the election, and inquired into the uses made of the startling amounts of money which had been transferred by UMWA headquarters in Washington to selected districts during the campaign, it again was stymied by the lack of records which would establish what actually had been done with these hundreds of thousands of dollars.

Thus far, the Department has simply sought an injunction to require proper records to be kept in the future. However, since there seems to have been a deliberate policy of sparse record-keeping that makes it impossible to determine that Union funds have been legally expended, I believe the Government should initiate criminal proceedings under Section 209 of the Act, which makes the willful refusal to maintain prescribed financial records a criminal offense. This is a case where it would appear to be in the public interest to prosecute for failure to maintain records, even though the Government may not obtain sufficient evidence to invoke the embezzlement section (501(c)) of the Act. It is important to note in this regard that an individual convicted of failure to maintain required records would thereby become legally disqualified from holding union office (Section 504).

4. I believe that the Department having asserted the use of the United Mine Workers Journal for campaign purposes as one of its grounds for overturning the election, should

be more alert to the use that is still being made of the Journal. This point was raised with the Secretary when he appeared before the Subcommittee and has again been raised in subsequent staff discussions with the Department. I am hopeful that the Department will request appropriate court relief, so as to preclude the possibility that any re-run election ordered by the court will not be improperly affected.

5. The Departments of Labor and Justice appear to have taken an unwarrantedly narrow view of Section 610 of the Act, which makes it a crime for any person to use force or violence in order to interfere with a union member's rights -- including the right "to express any views, arguments or opinions." In reporting on the episode in June, 1969, when Mr. Yablonski was physically attacked at a meeting in Springfield, Illinois, the Secretary and his Solicitor stated that the man eventually identified as the attacker explained that he was not paid or induced by UMW officials to assault Mr. Yablonski, but that it was strictly a spontaneous action resulting from something Mr. Yablonski had said in his speech with respect to a matter of union affairs. In the Government's view, we were told, this did not constitute a violation of Section 610.

This view is contrary to the terms of Section 610 and at least one Federal court of appeals decision, *United States v. Roganovich*, 318 F.2d 167 (7th Cir., 1963), and I believe our Committee should appropriately indicate its disagreement. Whatever practical problems might now stand in the way of successfully prosecuting this particular individual, the legal interpretation given to us by the Labor Department representatives should not remain unchallenged, lest it encourage similar actions by others in the future.

6. In my view, the Labor Department dismissed far too abruptly the objection that one-half of the UMWA's 1200 locals exist in violation of the Union's own constitution since they have less than 10 working members, and that members of such locals should have been transferred to, and required to vote from, properly constituted locals. The UMWA's constitution is quite clear on this score and, in view of the testimony we have already heard regarding the abuses to which these "bogus locals" are subject, I strongly disagree with the Secretary that any violation was at most a "technical" one.

While we will be hearing further evidence bearing on some of the foregoing matters, I thought it important to bring them to your attention at this time, as I believe they are issues on which the Subcommittee and the full Committee will need to make a judgment.

COAL MINE HEALTH AND SAFETY PROBLEMS

Since the signing on December 30, 1969, of the Coal Mine Health and Safety Act, the Administration, through a series of unfortunate decisions in certain matters, and its failure to act in other areas, has allowed a situation to develop, which on the surface, appears chaotic.

After surveying the first five months of this Act's operation and observing reaction within the industry, I must conclude that several very serious problems exist which are increasing in scope with each passing day:

1. Staffing at the Department of the Interior

The Department of the Interior undertook a major reorganization of the Bureau of Mines (both structurally and in terms of personnel) during the three-month period provided

under the Act for implementation. This reorganization was the second in little more than a year. As part of this latest reorganization, the Director of the Bureau, John O'Leary, was summarily dismissed the weekend prior to his scheduled testimony before the House Appropriations Committee; the Bureau's black lung expert, Henry Doyle, was reorganized out of his position and has refused a new position because he believed that the reorganization was detrimental to proper implementation of the Act. Now, the Administration has nominated as the new Director an individual whose suitability for this most difficult assignment has been subject to serious question.

2. Regulations Issued by the Department of the Interior

The Department of the Interior has issued a series of regulations, some in conjunction with the Department of Health, Education and Welfare. These regulations were issued either after the deadlines imposed by Congress, or only a day or two before they were to become effective. They were published as final regulations under procedures which did not provide opportunity for interested parties to comment. The regulations include several noticeable and serious deficiencies, some of which — such as the penalties section — have led to an emotional reaction in the coal fields, which is deterring rather than aiding compliance.

The Department of the Interior began to implement its regulations by what it calls "partial but representative (PBR)" inspections on March 30, 1970. For each notice of violation, it also issued a "notice of penalty," averaging ten such notices per mine inspected. The notice of penalty was provided under Interior's new regulations, and prescribes a schedule of penalties (beginning at \$25 per violation)

bearing no relationship to any of the criteria for penalties established in the Act (e.g., size of mine, wilfulness, seriousness of violation, effort of operator to comply). Since the publication of these regulations, Interior has modified the fee schedule, but has not corrected any of its defects.

Approximately 75 operators of small mines obtained a temporary restraining order against those portions of Interior's regulations containing the penalty schedule and safety standard requirements where the equipment, technology, personnel or materials required for compliance are not available. This order, in effect until a three-judge constitutional court convenes in September, has resulted in a substantial part of the statute not being enforced. In my judgment, the Government did not engage in the rigorous defense against this lawsuit that concern for safety of the miners required. Moreover, the Interior Department has, without justification, treated the restraining order as industry-wide instead of limited to the small mines bringing the lawsuit. The effect of this action has been to cut back on enforcement of the statute.

Proposed amendments to the Act on both the House and Senate sides have been introduced to postpone the assessment of penalties until September 1, 1970, to amend the standard requiring brakes on locomotives and haulage cars and to modify the definition of working face. On the Senate side, the amendment was offered by Senator Bennett for himself, Senator Cook and Senator Smith (Ill.), (S. 3733, May 1, 1970), and has been referred to this Committee. On the House side, it was offered by Congressman Burton (Utah) and Congressman Brock (Tennessee). In my opinion, no basis has been established for such action by the Congress, particularly since the problems involved can be dealt with by the Interior Department under its existing authority.

3. Reaction of the Industry

In addition to obtaining the court injunction, industry reaction to the new law and its administration has included closing mines (approximately 200 closed within two weeks of the effective date of the Act), and announcing price increases and further contemplated increases for coal, which are reported by the *Wall Street Journal* to range as high as 30%. Most of this increase is alleged to be a result of the added costs brought on by the Health and Safety Act. The newspapers are also reporting with increasing frequency statements by industry leaders, and others, attributing expected blackouts and brownouts this summer to shortages of coal caused by the new safety law. My survey and investigation of the power shortage warnings indicate that possible power failures would be largely due to the utility industry's inadequate generating capacity, as well as a shortage of coal-carrying railroad cars, and other causes not related to the new health and safety requirements.

4. Nomination of Dr. J. Richard Lucas

President Nixon has nominated Dr. J. Richard Lucas of West Virginia to be Director of the Bureau of Mines to replace John O'Leary. Shortly after announcement of the nomination, criticism was voiced by Congressman Saylor (R-Pa.) and Congressman Hechler (D-W. Va.) Since then, a great deal of press attention has focused on opposition to the nomination, and a number of coal miners have conveyed to me their deep concern that Dr. Lucas is not an appropriate choice. The opposition to his nomination is based primarily on charges that:

- 1). the scholarly credentials which supposedly qualify him for this position are seriously flawed,

- 2). he has a long history of close ties to the coal industry, coupled with a reported \$200,000 investment in mining interests, and
- 3). he has shown no evidence of the leadership potential and strong-mindedness which will be absolutely essential to the successful performance of this very demanding position.

5. Reaction of the Coal Miners

The Subcommittee has had several visitations from groups of coal miners urging the Subcommittee to take whatever steps are necessary to protect their health and safety and to ensure union democracy. Regarding health and safety, these miners link the nomination of Dr. Lucas with the demonstrably poor record of Interior in implementing the Act. The general attitude they express is that they were better off under the old, inadequate safety law than under the improperly administered improved law, and this attitude has been reflected in the walkouts which have occurred during the past week.

In view of the foregoing circumstances, I have scheduled a Subcommittee trip to the coal fields for June 25 and 26, about which you have been previously notified, in order to obtain further first-hand information. At the conclusion of this trip, I believe a determination can be made as to appropriate action by the Subcommittee respecting the administration of the Coal Mine Health and Safety Act.

With kindest personal regards,

Sincerely,

/s/ HARRISON A. WILLIAMS, JR.
Chairman,
Subcommittee on Labor

[EXHIBIT C-3 TO MOTION FOR LEAVE TO INTERVENE]

Discussion of Senator Williams' "Status Report"
of June 24, 1970 Concerning a Senate Labor
Subcommittee's Investigation of Activities of the
United Mine Workers

On June 24, 1970, Senator Harrison A. Williams, Jr. submitted to each member of the Senate Labor Subcommittee a "Status Report" of the activities and interim conclusions of that committee in investigating the United Mine Workers and the Department of Labor's activities vis-a-vis the UMW. That status report makes 6 specific criticisms of Labor Department actions and policies in regard to the UMW election case. Most of these points were dealt with in detail in Secretary Shultz' testimony of May 4 but a reexamination of these issues is necessary in order to prevent misunderstanding.

In summary, Senator Williams' criticisms, and the Department's position are as follows. A more detailed discussion of each point is attached.

1. The status report states that the Department of Labor should have investigated alleged violations of the elections provisions of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the LMRDA or the Landrum-Griffin Act) during the election campaign.

The Department has *never* conducted an investigation of an election during the campaign. This is a sound policy and is required by the nature of the statute.

2. The status report states that Mr. Boyle's action to increase pension benefits is an "improper interference" with the election process.

The Department has concluded that action, by a union officer (even if unwise or motivated by a desire to gain support), during a campaign, to improve the economic condition of his members does not, by itself, violate the LMRDA.

3. The status report suggests that criminal proceedings be initiated for a willful refusal by UMW officials to maintain required records. Senator Williams has also suggested that criminal proceedings be initiated because certain financial reports have not been filed on time.

The Department does not have the necessary evidence to support a criminal action for "willful" violation of the record-keeping requirements or for "willful" refusal to file financial reports.

4. The status report suggests that the Department should seek "appropriate relief" for alleged current misuse of the UMW Journal.

To the extent that the status report suggests that the UMW Journal should be neutral until the court orders a new election, it implies that the Government should oversee the contents of the publication. This is difficult to square with traditional notions of freedom of the press.

5. The status report suggests that criminal prosecution should have been sought under section 610 of the Landrum-Griffin Act for the physical attack made on Mr. Yablonski in Springfield, Illinois.

The Department of Justice concluded there was no sufficient basis to prosecute criminally under section 610 which requires proof that the assault on Mr. Yablonski was made "for the purpose of" interfering with his rights under the Act.

6. The status report asserts that members of locals having less than ten working members "should have been transferred to, and required to vote from properly constituted locals."

There is no contention that persons voted who should not have. Moreover, the LMRDA does not authorize the Secretary of Labor to compel a transfer of union members from one local to another. Such an extraordinary power would, in effect, authorize the Department to reorganize unions.

1. The status report states that the Department of Labor should have investigated alleged violations of the elections provisions of the LMRDA during the election campaign.

The Department of Labor has concluded that an investigation of election violations during the course of a campaign is not contemplated by the statute. In the eleven years since the law was enacted the Department has never investigated during the course of a campaign despite many requests to do so. This practice has, in the past, been justified as a policy consistent with the purposes of the statute. It is merely a change of emphasis to call it a practice required by the statute.

In examining the Department's authority to investigate during the course of a union election campaign it is necessary to consider the interrelationship of Title IV "Elections" and section 601.

Title IV of the Act prescribes a three-stage procedure for remedying violations of the statute's election provisions. First, the invocation of the internal union remedy; second, investigation by the Secretary; and third, court action to set aside the election and conduct a new one under the

supervision of the Secretary. The statute gives the Secretary no authority to challenge violations occurring before the election is held or before the internal remedies have been exhausted. This is no legislative accident. It reflects the Congressional commitment to minimize the extent of Government intervention. The bill's supporters repeatedly stressed that its language should be read as authorizing only the most minimal Government intervention in union affairs. As the Senate Labor and Public Welfare Committee said when it reported out S. 1555, three "principles" had guided its deliberations. And the first of these principles was the maintenance of minimal Government interference. Specifically, the Report stated:

The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective bargaining agents.¹

The Congressional policy of limited governmental intervention into union elections under Title IV on first

¹ See the Senate Labor and Public Welfare Committee Report. *U.S. Code Congressional and Administrative News*, 1959, p. 2323, Vol. 2. The other two principles the report emphasized were the avoidance of "paternalistic" government regulation and the institution of direct remedies for abuses, without applying "destructive sanctions" to the unions. See also, *Wirtz v. Local 153*, 389 U.S. 463.

impression appears inconsistent with section 601 of the Act which, read literally, grants a broad investigatory power independent of the limitations of Title IV.

While two courts of appeal² have held that the broad investigatory authority under Title VI is not limited by the express procedural requirements of section 402, one of these courts did recognize a potential conflict between the overall policy of Title IV and an unrestrained use of section 601 during an election campaign.

The Court noted the union's argument that: "... if Section 601 is construed to empower the Secretary to investigate Title IV violations prior to the date of an election, the investigation might well unduly influence the outcome of the election" and responded that "Since the investigation in this case was not instituted until after the election had been held, we express no opinion as to the Secretary's power to commence an investigation during an election campaign."³

An investigation during an election campaign would raise the very issue which the First Circuit did not decide and which no court has ever decided. From 1959 until today, the sole use of section 601 investigatory authority in election cases has been to collect or preserve evidence regarding elections which have already been held and, therefore, in circumstances in which the outcome of the election could not be affected. Investigatory authority under Section 601 has been used only after the balloting was done — but

² *Local 57 v. Wirtz*, 346 F.2d 552 (1st Cir. 1963); *Wirtz v. Local 191*, 321 F.2d 445 (2d Cir. 1965).

³ 346 F.2d 552, 555.

before the procedural requirements for a title IV investigation had been met. Under these circumstances, an investigation cannot affect the outcome of the election.

A limitation of investigative power under section 601 in election cases to circumstances which will not unduly influence the outcome of the election is a rational harmonizing of these two different provisions of the statute.

While Section 601, taken alone, might justify a pre-election investigation, this language – like the language of any other provision of any statute – may not be taken alone. It must be read in context and in light of the drafters' purpose, due consideration being given to the ramifications which flow from any particular reading.

Contextually, the placement of the provision and the usage of similar language in numerous other statutes indicates that its purpose was to ensure the availability to the Secretary of the tools which are necessary for carrying out his litigative responsibilities under the substantive sections of the Act.⁴ The intention of the drafters supports this contextual analysis, for in both the House and the Senate Committee reports, it is noted that section 601 merely restates the authority to investigate which is given the Secretary elsewhere in the Act.⁵

The conclusion drawn from the legislative history is supported by a number of additional considerations.

⁴ See *Oklahoma Press Publishing Co. v. Walling*, 327 US 186 (1946), where similar FLSA language was so interpreted.

⁵ The precise word used is "recapitulates." See pp. 2350 and 2449, *U.S. Code, Congressional and Administrative News*, 1959, Vol. 2.

a. Most investigations of union elections reveal some violations of the Landrum-Griffin Act. Some of those violations are more significant than others. Some of the violations are committed by the unsuccessful candidate. The Congress was conscious of these realities and authorized the Labor Department to bring action *only* where it is determined that the violations "may have affected the outcome of an election." Can one attribute to the Congress an intent that the Labor Department should investigate before an election and then wait until afterward to determine if the violation could have "affected the outcome" of the election?

There are an estimated 20,000 union elections each year and it is not uncommon for one of the partisans in a hotly contested union election to make allegations of a "pattern of irregularities which, if allowed to continue, will inevitably taint the election." If it were incumbent upon the Labor Department to conduct an investigation each time such allegations were made during the course of a union election, the investigatory staff having the responsibility would have to be radically expanded despite the fact that the Department could not act upon any such investigation unless and until valid complaints were processed and left unresolved by the unions and a determination was made that the allegations, if substantiated, might have affected the election outcome.

b. The Government must, of course, avoid taking sides in a union election, or giving the appearance of doing so. If the Department of Labor

were allowed to and did investigate during the pre-election period, it might, by the mere fact of investigation alone, be interpreted as taking the side of the party alleging violations. The investigation might become the central issue in the campaign to the exclusion of the substantive issues of genuine importance to an informed electorate.

Further, in the pre-election probing for facts, investigators must ask questions which may often raise at least suspicions in the minds of prospective voters that the Department of Labor was taking sides.

The election influence of a Government investigation is compounded when one considers that at the conclusion of the investigation the Department of Labor may only report its findings or remain silent. Either course carries significant implications of "whitewash," "partisanship," etc., and more deeply embroils the Department in a campaign which is supposed to be between the candidates.

It is a recognition of these clear facts of political life that has led the NLRB to await the outcome of an election before investigating alleged misconduct during a representation election campaign.⁶ It seems unlikely, particularly in light of

⁶ When an unfair labor practice charge is filed with the Board, the election process is stopped, an investigation is conducted and a remedy effectuated, unless the charging party waives his right to this procedure and desires to go forward with the election. Only then is the election process recommenced. See *Twenty-Ninth Annual*

the Government's preclusion from anything but post-election functions in Title IV, that an informed Congress could have intended anything else here.

c. It is also significant that under Title IV the Department's post-election investigation findings of violation must be proved in court before an election can be overturned. The Congress specified that the Department of Labor was not unilaterally to impose its judgment concerning election conduct upon the union. However, if the Department were to conduct an investigation prior to the election, that investigation itself, plus any announcement of its findings would clearly have an impact, an impact unilaterally created by the Department without the court review required by the Congress in Title IV.

Fundamental issues of national labor policy are involved here. If the Congress believes that violations of the election provisions of the Act should be investigated by the Department before the election is held, it should not only provide for such investigations but also vest the courts with jurisdiction so that the Department's findings may be adjudicated and appropriate relief granted, or if the Congress wants the Department to supervise union elections generally, it should express its will in legislation.

2. The "Status Report" expresses particular concern that Mr. Boyle's pre-election vote to increase pension benefits

Ftn. 6 (Cont'd.)

Report of the NLRB, p. 49. Thus, the Board believes it impossible to fairly continue an election campaign at the same time it is investigating charges of illegality relating to the campaign.

for union members was an improper interference with the election process, and, as such, violated sec. 401(e) of the Landrum-Griffin Act.

Section 401(e) states, in pertinent part, that a union member shall have the right to participate in the union's electoral process "without being subject to . . . improper interference of any kind by such organization or any member thereof." It is contended that Boyle's vote amounted to improper interference.

The background of the pension increase, however, does not permit such an easy judgment, for there was among the union membership widespread sentiment in favor of a pension increase. At the 1968 convention, 242 resolutions were introduced in favor of it. Boyle went on record at the convention as also being in favor of it, but he did not have the power to implement his views, as he was then not a pension fund trustee. When, upon the death of John L. Lewis, he did become a trustee, he voted his views.

In addition, the report misconstrues the operation of the UMW pension fund. The fund is governed by three trustees — one from the union, one from management and one neutral. Boyle could be outvoted at any time. The trustees could act today, if they so desired, to change benefit levels. The fact is that pension levels were not increased by Boyle, but by a majority vote of the trustees.

The legal question is whether the increase in pensions was "improper interference" with the election.

The legislative history indicates the term "improper interference" is limited to interference that amounts to coercion or intimidation. The House Committee stated in its

report that the purpose of section 401(e) was to "forbid intimidation of voters and denial of the right to vote."⁷

In addition, the *Exchange Parts* doctrine, which gives a broad reading to the term "interference" in the Labor Management Relations Act, is not applicable. In *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405 (1964), the Supreme Court held that an employer interfered with the employees' rights by granting a raise to employees during an organizing drive. The Court decision was based on the fact that such a raise demonstrates the employer's power. "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow, and which may dry up if not obliged."⁸ That reasoning does not apply to an internal union contest because neither faction has that kind of unilateral power.

But it is not only the lack of unilateral power which makes the *Exchange Parts* analogy a false one. In a representation election, the contest is between the employer and the union — and the employer will remain powerful regardless of who wins the election. In a union election if one side is defeated, its power ends and, therefore, even a demonstration of power before the election is not necessarily an intimation of what will happen after the election.

There is a more basic question, too: What kinds of actions are permissible in an attempt to convince voters to vote one way or the other? No one would contend that

⁷ U.S. Code, *Congressional and Administrative News*, 1959, Vol. 2, p. 2439.

⁸ 375 U.S. at 409.

the Act proscribed campaigning and attempts by candidates and their supporters to influence the voters to vote for their candidate. If one of the candidates holds a position which provides him with the power to enhance the economic benefits of the members, is he precluded from doing so during the period of the union's election campaign? If the Labor Department were to decide that a pension raise, such as is involved in the present case, constitutes "improper interference", would not an incumbent candidate's negotiation of a raise in the wage scale during the campaign period also be a violation of the Act? Statutory language should not be strained to reach such an extraordinary and undesirable result. The Labor Department's interpretation is supported by sound policy and the legislative history.

If there is serious Congressional concern about the misuse of pension trusts, as there is Administration concern, it would be appropriate to expedite the passage of the Administration's proposed Employee Benefits Protection Act. That bill would require pension fund trustees to act with prudence and "solely in the interest of the participants and beneficiaries of the fund."

3. The "Status Report" suggests that criminal proceedings be initiated for a willful refusal by UMW officials to maintain required records. Senator Williams has also suggested that criminal proceedings be initiated because certain financial reports have not been filed on time.

There is now pending in the Federal courts a civil action brought by the Secretary of Labor to enjoin the UMW's violations of the reporting requirements of the Act. Without becoming involved in a detailed discussion of this case or other investigations which are being currently undertaken, it is important to point out the background of this matter.

In March 1969, before Mr. Yablonski's announcement of his candidacy, the Department of Labor began an investigation of the UMW's financial records. Violations were found and the union was officially notified of its deficiencies.

On March 5, 1970, the Secretary of Labor brought a civil action against the UMW which sought, among other things, a preliminary injunction in relation to the alleged record-keeping violations.

Subsequent to the complaint, the Department filed a motion to require the union to produce its books and records for the years 1967, 1968, and 1969. This motion was recently granted and the Department's auditors will be inspecting the pertinent material shortly.

The "Status Report" suggests, however, that in addition to this action, there should be initiated a criminal proceeding for the willful refusal to maintain the required records.

The Government's evidential burden is much greater in a criminal case than in a civil one. In a civil action, the Government's burden is to prove the allegations by a preponderance of the evidence. In a criminal case, the allegations must be proved beyond a reasonable doubt. Furthermore, a criminal conviction requires a showing of "willfulness" which would be especially difficult in the UMW case because their record-keeping procedures apparently have changed little since the early days of John L. Lewis and the Department has no evidence establishing "willfulness."

The most important goal is getting accurate records. The Department has pursued that goal in a diligent, direct manner.

The UMW, in fact, has been late in filing its financial reports. Each year, however, more than 10,000 delinquencies

and late filings occur. Aside from the fact that such a filing does not itself constitute a sufficient offense to warrant criminal prosecution without evidence of "willfulness", the result of a position to the contrary would require the Department to proceed criminally against a vast number of American labor unions.

4. The "Status Report" alleges that the UMW Journal is being misused and suggests that the Department of Labor seek "appropriate relief."

The misuse of the UMW Journal forms part of the basis for the civil action brought by the Department of Labor against the UMW on March 5, 1970 and the Department has requested that the court grant appropriate relief. The issues of the UMW Journal published since the date of the election are presently being examined, and consideration is being given as to whether appropriate interim relief should be requested in the pending action. However, the legal, and indeed the constitutional problems are very difficult and are illustrated by the holding in a case brought by Mr. Yablonski during the election campaign, in which the court found itself precluded by the First Amendment guarantees of free speech and press from granting any relief which would interfere with the free operation of the Journal. [*Yablonski v. UMWA*, 305, F. Supp. 868 (D.C., Sept. 15, 1969)]

5. The "Status Report" states that an indictment should have been issued, pursuant to sec. 610 of the Landrum-Griffin Act for the physical attack made on Mr. Yablonski in Springfield, Illinois. The report cites the case of *United States v. Roganovich*, 318 F.2d 167 (7th Circuit, 1963), as authority for this assertion.

Section 610 of the Act makes it a crime for any person to use force or violence, or the threat of force or violence,

"to restrain, coerce, or intimidate . . . any member of a labor organization *for the purpose* of interfering with" his rights under the Act. (emphasis added)

Section 101(a)(2) establishes, as one of these rights, the right of every union member "to express any views, arguments, or opinions; and to express at meetings of the labor organization his views . . . upon any business properly before the meeting."

On June 28, 1969, Mr. Yablonski spoke at a campaign meeting in Springfield, Illinois. As the meeting was breaking up, Mr. Yablonski was hit on the chin and knocked unconscious by a union member. The FBI promptly investigated the incident. Its investigation determined that the assault was the spontaneous action of a man who had disagreed with Mr. Yablonski's views on allowing pensioners to vote; he was not paid or otherwise induced to commit the assault. On the basis of the facts revealed, the Department of Justice concluded that there was no violation of section 610 and that no prosecution should be undertaken.

The case of *United States v. Roganovich* does not alter this judgment. *Roganovich* concerned an assault at a union meeting which occurred after a member challenged the statement of the local's business representative. The purpose of the assault was to keep the member from expressing his views. To obtain a conviction under section 610, the Government must be able to show not only that the assault took place, but that the purpose of the assault was intimidation. That purpose could not be shown in the Springfield incident. The assailant had become riled up — emotionally distraught — over Yablonski's position relating to voting rights for pensioners.

That the assault took place is undeniable; that it was violative of state and local law is also highly probable. But

an argument between two union members over union policy which results in an altercation is not, just because there was an altercation, a violation of Federal law.

6. The "Status Report" states that the Department of Labor dismissed too abruptly the problem of "Bogus Locals" (i.e., locals having less than 10 working members). The report contends that the members of one-half of the UMWA's 1200 locals should have been transferred to, and required to vote from, properly constituted locals. There is no contention here that persons voted who should not have; it is only contended that they should have voted at a different polling place.

This allegation draws its chief appeal from the use of the words "bogus" or "bogey." No one has yet argued that the members of these locals are not entitled to vote under the UMW constitution and under the Act. The argument, therefore, is only *where* the members of these locals should vote. If the locals are not legal, the members would just have been transferred to other locals and voted at a different polling place. Remove the label "bogus" local and the issue falls into perspective.

These "bogus locals" are locals which have fewer than ten working members. Article XIV, Section 1 of the United Mine Workers' Constitution provides that "Local Unions shall be composed of ten or more workers, skilled and unskilled, working in or around coal mines, coals washeries, coal processing plants, coke ovens, or in other industries designated and approved by the International Executive Board, but seven members shall be a quorum for Local Union." Section 19 of that same Article provides: "When a mine is abandoned indefinitely and all the members of the Local Union having jurisdiction over it have gone to work elsewhere, the Local Recording Secretary must notify

the District Secretary of the fact, and the District Secretary must collect the charter, seal, moneys, books, supplies, property, including real estate, belonging thereto and notify the International Secretary-Treasurer." Section 21 of that Article provides: "If any mine or colliery is permanently abandoned, or should any Local Union for any cause disband, or should its charter be revoked, the charter and all moneys, supplies and property, including real estate belonging thereto, shall be taken over by the International Union; provided, that any remaining members of such Local Union in good standing shall be given transfer cards."

The Union had always interpreted these provisions of its Constitution as requiring at least ten working members before a local could receive a charter, but did not require that if a chartered local ends up with fewer than ten working members, its charter must be revoked. The LMRDA does not, of course, contain any authorization for the Government to compel the transfer of members of one local union to another local. The authority to reorganize the internal organizational structure of unions would be such an extraordinary power that it would clearly require new legislation. The Department of Labor has reviewed this interpretation and has determined that it is not arbitrary.

[EXHIBIT D TO MOTION FOR LEAVE TO INTERVENE]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA-----
JOSEPH A. YABLONSKI, *et al.*,

Plaintiffs,

v.

UNITED MINE WORKERS OF
AMERICA, *et al.*,Defendants.
-----Civil Action
No. 3436-69COMPLAINT FOR ACCOUNTING, RESTITUTION
AND DAMAGES FOR VIOLATION OF
29 U.S.C. § 501

1. This is an action for an accounting, restitution, and damages. Jurisdiction is founded on the District of Columbia Code, §§ 11-521 (1967 ed.) and on 29 U.S.C. Sections 185, and 501(a) and (b), and on 28 U.S.C. Section 1331. The matter in controversy exceeds the sum or value of \$10,000, exclusive of interests and costs.

2. Plaintiffs, Joseph A. Yablonski, Karl Kafton, Richard Weaver, John Wnek, Harry Elmer Brown, P. G. Gillespie, Harry Patrick, Arthur Nelms, George R. Thomas, Mike Trbovich, Joseph Daniels, and Marion Pelligrini, are individuals and members in good standing of the United Mine Workers of America (hereinafter sometimes referred to as "UMWA"). They bring this action on their own behalf, on behalf of the UMWA and on behalf of all other members of UMWA, all of whom have a joint and common interest in the subject matter thereof.

3. Plaintiffs are suing individually, and also as representatives of all UMWA members in whose welfare and interest it is to obtain an accounting, restitution and all other relief required to devote UMWA funds and property exclusively to the welfare and interest of the general UMWA membership. The number in this class is about 200,000 and they reside and work throughout the United States and Canada so that it is impracticable to bring them all before this Court. Plaintiffs assure the adequate representation of all. This is, therefore, a proper class action under Rule 23 of the Federal Rules of Civil Procedure.

4. Defendant, United Mine Workers of America, whose principal office is located in Washington, D.C., is a labor organization within the meaning of Section 3(i) and (j) of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter sometimes referred to as "LMRDA") (29 U.S.C. 402(i) and (j)). Although UMWA is named as a defendant, this action is brought in its behalf and in behalf of all its members as a group.

5. Defendant, W. A. ("Tony") Boyle, is currently the International President of UMWA, a position he has held since January 1963. Before that time, from April 1960 to January 1963 he served as International Vice President. As International President and Vice President, Boyle was at all times referred to herein as an officer within the meaning of the Act. He is complained about in his official capacities and individually. The duties and powers of the International President are set forth in Article IX of the UMWA Constitution.

6. Defendant George J. Titler, currently the International Vice President of UMWA, has held this post since January 1966. He is complained of as International Vice President and individually. The duties of the Vice

President are set forth in Article IX of the UMWA Constitution.

7. Defendant John Owens, the International Secretary-Treasurer of UMWA was at all times referred to herein as an officer within the meaning of the Act, having held this post for 21 years. The duties of the Secretary-Treasurer are set forth in Article IX of the UMWA Constitution.

8. The individual defendants (hereafter sometimes referred to as the "International officers") have occupied and now occupy positions of trust in relation to UMWA and its members individually and as a group. Said UMWA officers owed to plaintiffs and to UMWA fiduciary duties, including the duty to expend UMWA funds solely for the benefit of the organization and its members and in accordance with the UMWA Constitution. The funds and property of UMWA, including monies contributed by the members in the form of dues and other payments, were and are in the custody of defendants solely in their fiduciary capacity.

9. Section 501 of LMRDA (29 U.S.C. 501) reads:

"(a) The officers, agents, shop stewards and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with

such organization as an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization"

Plaintiffs allege that the individual defendants have violated the fiduciary duties set forth in Section 501(a) of the Act. More particularly, they are charged herein with, in conflict with the interests of the UMWA and its members: (a) surrendering nine million dollars of UMWA assets, unjustified by any claim of union benefit; (b) misappropriating and misusing union funds for their own personal gain; (c) expending vast sums from the union treasury for their own self-aggrandizement; (d) diverting union funds, property, and resources to reduce the strength of their internal opposition and increase their own power within the union; (e) diverting union funds and resources to advance their 1969 reelection efforts; and (f) failure to account for and pay over to the union outside funds.

A

DEFENDANTS HAVE SURRENDERED 9 MILLION DOLLARS OF UMWA ASSETS, UNJUSTIFIED BY ANY CLAIM OF UNION BENEFIT, IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

10. Defendants have surrendered millions of dollars of UMWA assets, unjustified by any claim of union benefit, in conflict with the interests of UMWA and its membership.

At the end of 1962, the value of UMWA investments totaled \$30,753,023. From January 1963 through December 1968 the International Officers added from union revenues \$1,346,477 in new UMWA investments. But the total value of UMWA investments during this period of time, a financial boom period, declined to \$24,574,519. This loss of over seven and a half million dollars in six years has not been justified by defendants by any claim of union benefit or interest, and constitutes either grossly reckless conduct by them or misappropriation of union assets for unauthorized purposes.

11. In the fiscal year ended December 31, 1968, the UMWA had an outstanding loan to Lewmurken, Inc., of \$1,451,104. Lewmurken, Inc., incorporated in Delaware, has its principal place of business at 900 Fifteenth Street, N.W., Washington, D.C., the UMWA principal headquarters. Lewmurken's major asset is ownership of approximately 30% of the stock of Rocky Mountain Fuel Co., a New Jersey corporation located in Denver, Colorado once owned by Miss Josephine Roche, a trustee of the UMWA Welfare and Retirement Fund. Rocky Mountain Fuel Company went into receivership in 1942, the year Lewmurken came into existence, and the 1968 value of this 30% ownership was only \$146,906. Consequently, there is little chance that the loan will ever be repaid. The investment is unjustified by any union purpose. The loan to Lewmurken is purportedly for the purpose of "Business investment and to enhance employment opportunities of union members" and payment of this loan is to be "on demand" (BLMR File No. 000063). Lewmurken has an outstanding loan to Freeport Coal Company of Morgantown, West Virginia. Recently, the land owned by Freeport Coal Company has been leased to Kingwood Mining Co., a non-union coal mining operation. The UMWA, therefore, has

an equitable interest in a non-union operation, in conflict with the interests of the UMWA and its membership.

B

DEFENDANTS HAVE MISAPPROPRIATED AND MIS-
USED UNION FUNDS FOR THEIR OWN PERSONAL
GAIN, IN CONFLICT WITH THE INTERESTS OF UMWA
AND ITS MEMBERS

12. The International officers have made a number of unexplained grants, loans, and expenditures of union money. Thus for example in 1967, union attorney Harrison Combs received a grant for \$5,000 and union attorney Willard P. Owens, son of defendant Owens, received one for \$10,000. And in 1965, without explanation, the union loaned one "John E. Kusik" \$39,862. The defendants, moreover, have since 1963 received over \$21,000 in contingent fund advances and in 1963 expended \$10,000 for "incidental expenses". They have not accounted for these grants, loans, advances and expenses or given any justification therefor.

13. The defendants have used, and continue to use, attorneys on the payroll of the UMWA to defend themselves against justified charges of misuse of union funds and violation of federal law, in clear breach of their fiduciary duty to the union and its members. They have also hired highly-paid outside lawyers to defend them on justified charges of breaches of trust and violations of law and have paid and are paying them substantial fees from UMWA funds.

14. Defendant officers have raided the UMWA treasury to provide themselves with lavish personal benefits unauthorized by the UMWA membership and in conflict with

the interests of UMWA and its membership. Thus, for example, from January 1963 to December 1968, the UMWA has paid \$68,894 to the Sheraton-Carlton Hotel in Washington, D. C., to provide Secretary-Treasurer Owens with an expensive two-room suite in which he resides. International officers are regularly furnished with Cadillac automobiles paid for by the union and with special accounts with which they charge the union for their personal expenses. And they have made gifts out of UMWA funds to institutions in their home states to enhance their personal prestige.

15. Defendant officers have, without authorization, diverted funds from the union's treasury to provide themselves with an elite pension plan which guarantees their retirement, at full pay, without any contribution whatsoever by the officers, and have thus unlawfully enriched themselves at the expense of the union. Prior to 1959, International officers' pensions were paid out of general revenues according to an established scale. In 1960, this pension plan was incorporated into an irrevocable trust to comply with the Welfare Pension Act. Paragraph 10 of this trust includes a provision that those who have served as International officers for more than 10 years are to receive their full salary on retirement. To fund this giveaway, \$850,000 of UMWA funds was deposited in a special "Agency Account". In about 1963 or 1964 the Internal Revenue Service ruled this pension was discriminatory. Subsequently paragraph 10 was amended, and the special provision relating to International officers was deleted. At this same time, a new elite pension plan was created for "Resident International Officers" for which President Boyle, Secretary-Treasurer Owens and ex-President Lewis alone qualified. To fund this, an additional \$650,000 was transferred from the UMWA treasury to the Agency Account

from the union's treasury without any authorization from the membership. The elite pension fund was created clandestinely and has been kept secret from not only the members, but from the International Executive Board, the union's highest ruling body, as well. By means of this plan, the International officers have diverted some \$1,500,000 from the union's funds into a special "Agency Account" in substantial part for their own pecuniary benefit, in conflict with the interests of UMWA and its membership.

16. The International officers have padded the UMWA payroll with their own relatives who receive exorbitant salaries and expense allowances from UMWA and who perform services for UMWA, if any, that do not remotely measure up their compensation. Thus, for example, President Boyle's daughter, Antoinette Boyle, had received from UMWA \$190,867.03 in salary and expenses from January 1963 through December 1968. During this same period of time, President Boyle's brother, R. J. Boyle, received \$186,156.27 from UMWA. Miss Boyle, listed as an attorney, presently receives a salary of \$40,000 plus expenses, a salary equal to that of the Vice President of the union. Even the salary paid the General Counsel of the union does not exceed that paid Miss Boyle. Purportedly, Miss Boyle receives this salary for work done in the Billings, Montana, UMWA office. But there is little coal mining in this area — some 250 active coal miners and less than 700 pensioners — and there is no organizing going on. There is, therefore, only the rarest, if any, need for legal advice or work. Secretary-Treasurer Owens has likewise added relatives to the UMWA payroll whose services do not remotely measure up to their compensation. Thus his son, Ronald Owens, the appointed Secretary-Treasurer of District 6, receives about \$8,000 more in salary than his highest paid counterpart in any other district; and his son, Willard, a UMWA attorney, earns

as much as the Union's General Counsel. Furthermore, the International President has raised the salary of these and other employees and made grants of additional salaries to them without prior approval or subsequent ratification of the International Executive Board as required by Article X, Section 2 of the UMWA Constitution. In fact, the minutes of the International Executive Board reflect that no reports of these actions were ever made to the International Executive Board for approval. These practices of defendant International officers of UMWA drain the union's treasury for the personal and pecuniary benefit of these officers and their families, and is in conflict with the interests of UMWA and its members.

C

DEFENDANT OFFICERS HAVE EXPENDED VAST SUMS FROM THE UNION TREASURY FOR THEIR OWN SELF-AGGRANDIZEMENT, IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

17. The International officers have used the funds of the UMWA for their own self-aggrandizement, contrary to the best interests of the union and its membership. From January 1963 to December 1968, \$93,375.70 was expended from the union's treasury to pay for photographs of defendant officers. This does not include the photographs purchased for use in the UMW Journal. During this same period of time, \$25,000 of UMWA funds were used to purchase portraits of these officers. This money was used to glorify the officers, not to benefit the organization or its members.

18. In connection with the 1964 and 1968 conventions of the UMWA, the International officers expended vast sums of money from the union's treasury for their own

glorification. For example, they spent over one hundred thousand dollars for "Boyle" lighters, pens, gavels and clocks which were distributed to delegates to the 1968 convention. Nor was any reasonable check made on expenditures for the Conventions, and members' money was wastefully squandered in other ways which directly benefitted the incumbent officers. For the 1964 convention, over \$390,000 was paid to bands invited to the convention; in 1968 almost \$200,000 was spent for this purpose. In addition to providing music, these bands led Boyle-boosting delegations through the aisles of the convention halls, carrying professionally prepared Boyle placards.

D

DEFENDANTS HAVE DIVERTED UNION FUNDS, PROPERTY, AND RESOURCES TO REDUCE THE STRENGTH OF THEIR INTERNAL OPPOSITION AND INCREASE THEIR POWER WITHIN THE UNION, IN CONFLICT WITH THE INTERESTS OF UMW AND ITS MEMBERSHIP

19. Prior to defendant Boyle's presidency, UMW conventions were held near the geographic center of the coal mining regions to minimize transportation costs of delegates and to permit maximum participation of UMW locals. Upon his taking control of the union, and to prevent militant working locals opposed to him from sending delegates to conventions, Boyle held the conventions out of the coal mining areas, in Bal Harbour, Florida and Denver, Colorado, at a tremendous increase in cost to the union. Thus, in 1960 when the convention was held in Cincinnati, Ohio, the UMW paid a total of \$89,505.20 to the Districts for delegates' transportation costs. In 1964, when the convention was held in Florida, UMW disbursements to the

districts for transportation totaled \$140,338. Transportation costs for the 1968 Denver convention totaled a record breaking \$338,583. Moreover, in 1964 and 1968 these disbursements for transportation were made in cash; no adequate records were kept of disbursements, and many Boyle supporters were paid as many as two or three times. Salaries and expenses of delegates on the various convention committees were, moreover, grossly excessive. In 1968, for example, the 39-member Appeals and Grievances Committee received \$40,800.00 in salaries and expenses, despite the fact that there were no appeals and grievances. In 1960, before Boyle's presidency, only \$139,765 was spent for convention committee salaries and expenses. In 1964 that figure rose to \$639,782.00 and in 1968 \$391,200.00 of union funds were expended for this purpose. Boyle handpicks men for these plush committee assignments to reward them at union expense for their support.

20. The International officers have "loaned" excessive sums from UMWA funds to Districts 19 and 28 to assure their own political control of these districts and of the union, in conflict with the interests of the union and its membership. From January 1963 to December 1968, defendants authorized \$3,702,159 to District 19 and \$1,828,498 to District 28. These loans are excessive in terms of the size and needs of these districts, but they have permitted the funneling of union money under the heading of "organization expenses" to political supporters of the defendants. Loans of a similar nature and for a similar purpose have been made to other Districts.

21. By manipulating loans and convention expense money to Districts, moreover, the defendants "stacked" the 1964 and 1968 conventions in their favor. For District 17, the largest UMWA district and a self-sustaining entity,

less than \$29,000 was spent for the 1968 convention, \$3,397 of which came from the District's own resources. By contrast, almost \$90,000 was spent in 1968 for "convention expenses", for District 19, which has about one-tenth the working membership of District 17, is not self-sustaining, and has received loans of over \$3,702,000 in the past six years. Over \$11,000 of this came directly from the International, the remainder from money previously "loaned" to it by the International. Looking at it from another viewpoint, the union spent over \$965.00 for each delegate from District 19, but only \$156.00 for each District 17 delegate. This policy of manipulating loan and expense money has benefited the defendants. The 1964 convention, for example, was completely dominated by a large group of white-hatted delegates, all from District 19 who seized the floor of the convention and the microphones to assure Boyle's complete control. Furthermore, the cost of sending delegates to the convention in Denver, Colorado and Bal Harbour, Florida, was prohibitively high for many locals and districts. The International paid their expenses – but as the figures above show – it did so selectively, to insure control of the conventions by the defendant officers. Additionally, many locals which could not afford to send delegates to the conventions were threatened with fines unless they turned their credentials over to Boyle supporters not members of those locals.

22. To assure their continued domination and control of the union, the International officers have allowed over 600 "bogey" local unions – locals with less than the 10 working members required by Article XIV of the UMWA Constitution for the maintenance of a local union—to remain in existence. The vast majority of these locals and their funds are directly controlled by the International officers and those working for them. At the 1964 and 1968

Conventions these bogey locals were used by the International officers to assure their control over the union. "Delegates" from these locals to the Convention were, in fact, men handpicked by the incumbents. Not only is the continued existence of these locals in violation of the union's Constitution, but it results in increased administrative costs to the union as well. Moreover, these locals receive over \$100,000 every year in dues, and the money in their combined treasuries totals several million dollars. If these locals were, as they should be, disbanded, the members would transfer to active locals and the money in the defunct local treasuries would revert to the UMWA. Failure to disband these approximately 600 locals has given the International officers unlimited control over substantial sums of money which need not be – and, in fact, are not – reported under LMRDA. There is also no reliable internal union auditing of the money in these locals' treasuries since the International auditors work directly under and for defendant Boyle.

23. Defendants have caused and permitted the wholesale buying of political support with union funds. Principally this is done by adding men to the union payroll. Through sham designations, union money has been spent to hire Boyle campaigners and to present and promote Boyle campaign rallies. Thousands of dollars from the treasuries of the International, the Districts, the Local Unions, and the Welfare Fund have been used to pad the union payroll with "coal dust committeemen", "checkers", "organizers", and temporary staff members who are, in fact, campaigning for the incumbent President, Boyle, in his 1969 reelection bid. Since most of these men receive under \$10,000 a year each, the union need not, and does not list them as employees in federal reports. Nor are they listed in the International Auditors' Reports. Moreover, union money is likewise used

to buy off dissidents. In 1966, for example, Joe Ladesic announced he would run for Secretary-Treasurer of District 5 against John Seddon, an ardent Boyle supporter. After Ladesic received backing from an overwhelming number of locals, he declined the nomination and was immediately added to the District's payroll. Since that time he has been paid well over \$60,000 from the union's coffers. His decision to decline the nomination was clearly motivated by the promise of well-paid employment by the union. In District 5 and in other districts as well potential dissidents and reformers are regularly bought off by full or part-time employment on the union payroll. This practice costs UMWA hundreds of thousands of dollars, buys political support for the International officers, and is not in the interests of UMWA or its members.

24. The International officers have maintained most of the UMWA Districts in trusteeship in violation of law and at great cost to the UMWA and its membership in money and in democratic rights. They have squandered large sums of union funds in defending the Government's suit to end the trusteeships, all for their private benefit.

25. In past elections, International officers have condoned and permitted union money to be spent to deprive members of their right to an honest election under the UMWA Constitution and LMRDA. For example, in 1964 Robert Gordon, a paid International representative, was observed stuffing a ballot box for Boyle and local officers have been paid to vote members by proxy in violation of the UMWA Constitution and to alter tally sheets.

26. Defendants have used union funds in efforts to cover up and justify their misdeeds. Thus, they have expended union assets to blunt criticism of their misdeeds, by attacking safety-crusader Ralph Nader, Representative

Ken Hechler and others for their criticisms of defendants' policies, including their failure to support adequate mine safety legislation. For example, in May, 1969, Mr. Boyle, using UMWA personnel, sought to persuade Miss Josephine Roche to forge John L. Lewis' signature to a document defending the Boyle policies and attacking Mr. Nader.

E

DEFENDANTS HAVE DIVERTED UNION FUNDS AND RESOURCES TO ADVANCE THEIR 1969 EFFORTS TOWARDS REELECTION; IN CON- FLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

27. In the nomination stage of the election for International officers scheduled for December 9, 1969, representatives paid by the International blocked secret ballot voting, the use of observers, the mailing in of nominations, and broke up rallies for Yablonski all to the personal benefit of defendants. Illustrative of the practice of using representatives paid by the International to deprive members of their constitutional and statutory rights to a fair election is the following incident. On June 29, 1969, a rally of Mr. Yablonski's supporters at Shenandoah, Pennsylvania, was broken up by paid appointed employees of the UMWA—International representatives Bobby Overa and John Karlavage—who paraded up and down the aisles of the meeting hall heckling the speakers. Karlavage gestured at the crowd with a clenched fist, ordering them to leave the rally. Accompanying Karlavage and Overa were 50 "pickets" paid \$20 each and organized by Karlavage. Karlavage is also the President of the Shenandoah Borough Council; he had tried to convince the school board secretary to lock out the meeting. Although unsuccessful he managed to deter

the town police from giving the meeting requested police protection.

28. In connection with the December 9 election, defendant International officers further breached their fiduciary duty in violation of Section 501 of LMRDA by utilizing the *UMW Journal* as a campaign instrument for incumbent President Boyle (D.C.D.C. Civil Action No. 2413-69, affirmed Nov. 28, 1969, C.A.D.C. Nos. 23,536, 23,659).

29. *UMW Journal* staff and operating funds were, moreover, used by the International officers in 1969 to prepare a vehemently anti-Yablonski scandal sheet entitled "Election Bulletin". This "Election Bulletin" was then distributed through district offices by district personnel to *UMWA* members. Use of union-paid personnel and funds for such blatant partisan purposes is a clear breach of the International officers' fiduciary duty.

30. On October 27, 1969, on *Journal* stationery and at union expense, a barely disguised anti-Yablonski release, which distorted Yablonski's contentions about pensioner voting rights, was distributed to newspaper editors throughout the country. Use of union money and personnel to prepare and distribute this release and other campaign material and otherwise to promote the incumbents' reelection was in clear breach of the officers' fiduciary duty.

31. Defendant officers have utilized union funds and personnel in 1969 to publicize and promote mine safety meetings which are actually no more than campaign rallies to promote their reelection.

32. District organizations have been used in 1969 as ready-made union-paid campaign committees for the

incumbent officers. In District 30, for example, the Committee for the Re-Election of our International Officers operates out of the district headquarters in Pikeville, Kentucky. The chairman of the Committee has a salary of \$11,130 as a district representative, the secretary of the committee is the secretary to the district president. In other districts as well, officers, staff members and district facilities have been utilized in a full time effort to support the incumbents' reelection campaign. These districts have mailed at district expense the "Election Bulletin" (see paragraph 29) to all union members. District 29 and other districts' funds were used directly to sponsor rallies for the incumbents and to publish rally programs. Indeed, Boyle's campaign itinerary directs District officials to set up such rallies for Boyle and visits to local mines. All of this is done at union expense.

33. Sham loans have been made to districts to finance defendants' 1969 election campaign. In February 1969, President Boyle held a series of conversations with presidents of various districts during which he told each of them to request a loan from the Washington headquarters to their districts in order to finance Boyle's reelection campaign. Subsequently, UMWA International officers have written checks to these districts for more than a million and a half dollars in loans to complete these arrangements. The funds so loaned are converted to cash by various devices in the districts and used in Boyle's campaign.

34. Union funds and promises of jobs on the union payroll have been used at defendants' direction to recruit men to support and campaign for the defendant officers. For example, Carson Hibbitts, President and Secretary-Treasurer of Districts 28 and 30 and International Executive Board Member of District 28, who holds these positions

by appointment of President Boyle, paid Albert Matney, Perry Fuller and Ray Hutchinson to attend meetings in Washington, D.C. and Pittsburgh, Pennsylvania, with money from the District 28 treasury. The delegation was told by Ray Thornbury, a paid International representative, to return to their local unions and campaign for Boyle. Additionally, Thornbury told Hutchinson that if he would support the union's "present policy" he would, in the near future, be rewarded with a job with the union. Use of union funds to recruit campaign workers is in clear violation of the incumbent officers' fiduciary duty. The same Carson Hibbitts with the knowledge and assent of defendant officers is using UMWA funds to prevent a local union at Vansant, Virginia, from having the right to elect local officers who do not favor him and Boyle.

35. In less direct ways, too, defendants have spent union funds to buy Boyle campaign workers. On October 23, 1969, for example, the International paid 500 miners \$60 a piece to come to Washington to "lobby" for the safety legislation then pending in Congress. The thirty thousand dollars spent in this venture was to promote the candidacy of the incumbent officers, not to assist in the passage of the coal mine health and safety bill. At no time was the union's chief lobbyist, Joseph A. Yablonski, acting director of Labor's Non-Partisan League, told of the plan to bring the "lobbyists" to Washington, nor was he ever given an opportunity to coordinate their efforts. In fact, the bill, which passed the House on October 29 by 389-4 and the Senate by a 73-0 roll call vote on October 2, was assured of passage long before these "lobbyists" appeared in Washington. Indeed, these "lobbyists" acted contrary to the best interests of the union, deriding Congressmen who fought for this safety legislation but who had opposed Boyle's reelection. This was an obvious

junket for Boyle supporters paid out of union funds in breach of the International officers' fiduciary duty to the UMWA membership. Junkets such as this have been used frequently to enlist Boyle supporters at a cost to the union of more than \$100,000 a year.

36. In an effort to prevent a fair and honest election on December 9, 1969, the defendant officers incurred additional costs in the printing of official ballots. Thus, they authorized the printing of an excessive number of ballots, including 51,000 which were not mailed to the locals but were delivered directly to defendants at the union's headquarters. Their explanation for these extra ballots — that some ballots might get lost in the mail — is not entitled to belief, in view of Secretary-Treasurer Owens' admission that he could not recall any complaints of lost ballots in the previous election for International officers. Furthermore, in an attempt to defeat the jurisdiction of the U.S. District Court (C.A. 3061-69), the defendant International officers authorized the printing of the ballots, tally and return sheets at a higher, overtime rate. The authorization of printing a grossly excessive number of ballots at a higher rate than normal was given to assist the incumbent International officers, at the expense of the union and its membership.

37. To prevent a fair election, the defendant International officers have failed to perform their statutory duties and have thus caused the union to incur substantial additional expense. Section 401(c) of LMRDA requires the union to maintain a current membership list at their principal headquarters for inspection by bona fide candidates for offices in the union. In a proceeding in the U.S. District Court (C.A. 3061-69), Secretary-Treasurer Owens admitted that he had failed to comply with the law in this

respect. Because of this failure, the union was required to spend large sums to compile a membership list on an expedited basis. Lists exist in each District office, according to Owens; had the officers requested copies of these lists in advance of the fair election lawsuit — as required by law — the cost of compiling a membership list would have been substantially lower.

F

DEFENDANT BOYLE HAS FAILED TO ACCOUNT FOR AND PAY OVER TO THE UNION OUTSIDE FUNDS RECEIVED BY VIRTUE OF HIS UMWA POSITION, IN CONFLICT WITH THE INTERESTS OF THE UMWA AND ITS MEMBERS

38. Annually, defendant Boyle and the union's General Counsel, Edward Carey, receive substantial remuneration from the National Bank of Washington for sitting on its Board of Directors. The UMWA owns 75 percent of the National Bank, and Boyle sits on the Board of Directors solely by virtue of his position in the union. In conflict with his fiduciary duties, however, he has not accounted to the union for these funds nor paid over these sums to the union treasury. Furthermore, he has made no effort to collect such sums from Carey for the union.

G

GENERAL ALLEGATIONS AND RELIEF

39. By reason of the foregoing acts and omissions of the defendants, they have violated the several duties prescribed in 29 U.S.C. 501(a), and, specifically, they have failed to hold the UMWA's money and property solely for the benefit of the UMWA and its members; they have

failed to manage, invest, and expend the UMWA's money in accordance with its Constitution and Bylaws; they have dealt with the UMWA as adverse parties or in behalf of adverse parties; they have held pecuniary or personal interests in conflict with the interests of the UMWA; and they have failed to account to the UMWA for outside funds received in connection with activities conducted by them on behalf of the UMWA. By reason of these violations of 29 U.S.C. 501 by the defendants, they have misappropriated and diverted many millions of dollars of UMWA assets to the detriment and harm of the union and its members.

40. There is no adequate remedy for the offenses complained of at law. Only judicial relief in the equitable form can provide such a remedy. It would be futile or worse to delay relief against defendants pending further efforts to obtain relief within the context of the UMWA Constitution. Indeed, the International Executive Board, in which power to entertain charges against defendant International officers is vested, is under the complete control and domination of defendant Boyle as International President.

41. On November 18, 1969, plaintiff Yablonski forwarded a letter to the individual defendants and to the members of the UMWA International Executive Board, requesting them to bring action against the individual defendants with respect to the matters asserted in paragraphs 10 through 38 of this Complaint. By letter dated November 25, 1969, defendants refused to take prompt action, despite the gravity of the misconduct involved, to obtain redress for the union and its members and to prevent further irreparable injury.

42. On November 26, 1969, the Department of Labor, as a result of its independent investigation of the conduct of defendants herein, issued a "Summary Report of Financial Investigation" of the UMWA, detailing many violations of 29 U.S.C. 501 by defendants which are encompassed in this Complaint. The Department of Labor transmitted its report to the Department of Justice for prosecution or other appropriate action.

WHEREFORE, the plaintiffs, Joseph A. Yablonski, Karl Kafton, Richard Weaver, John Wnek, Harry Elmer Brown, P.G. Gillespie, Harry Patrick, Arthur Nelms, George R. Thomas, Mike Trbovich, Joseph Daniels, and Marion Pelligrini, respectfully pray that this Court

1. Require defendants Boyle, Titler and Owens to account for all their relevant expenditures and receipts.
2. Require defendants Boyle, Titler and Owens to return all sums they misappropriated from the UMWA treasury for their own benefit.
3. Award damages as follows:
 - (A) To the United Mine Workers of America as against defendants Boyle, Titler and Owens, such sums as shall compensate the UMWA for damages sustained as a result of the defendants' violations of law established in this action;
 - (B) To the individual plaintiffs as against all defendants, such attorneys' fees, and costs and expenses incurred by plaintiffs in the prosecution of this action as the Court deems reasonable.

4. Grant such other and further relief as may be necessary and appropriate.

Joseph L. Rauh, Jr.

John Silard

Elliott C. Lichtman

Clarice R. Feldman

Rauh and Silard

1001 Connecticut Ave.,

N.W., Washington, D.C.

20036

Attorneys for Plaintiffs

[Filed October 12, 1970]

**OPPOSITION TO MOTION OF
MICHAEL TRBOVICH AND MINERS
FOR DEMOCRACY FOR LEAVE TO INTERVENE**

Comes now the Defendant, United Mine Workers of America, by its attorneys, and oppose the motion of Michael Trbovich, individually and as Chairman of and on behalf of Miners for Democracy, an unincorporated association, for leave to intervene in the above-captioned cause, and for grounds of said opposition state as follows.

1. Count I of the Complaint is an action by the Secretary of Labor to set aside a union election, pursuant to 29 U.S.C. §482. Congress has provided that the remedies therein contained are *exclusively* those of the Secretary of Labor.

2. The federal courts have uniformly held that motions for leave to intervene in suits brought by the Secretary of

Labor under 29 U.S.C. §482 to set aside union elections shall be denied.

3. Count II of the Complaint is an action brought by the Secretary of Labor pursuant to 29 U.S.C. §§436, 440, wherein it is alleged that the Defendant has failed to maintain certain records from which documents filed with the Secretary of Labor may be verified, explained or clarified. 29 U.S.C. §440 contains an *exclusive* grant to the Secretary of Labor to bring a civil action where it appears that any person has violated, or is about to violate, any provisions of the subchapter. Congress has determined that the remedies contained in said section are *exclusively* those of the Secretary of Labor, as they relate solely to records pertaining to reports filed with the Secretary of Labor.

4. Petitioner for intervention is not entitled to intervene under Rule 24 of the Federal Rules of Civil Procedure: no statute of the United States confers an unconditional, or conditional, right to intervene. To the contrary, the remedies contained in 29 U.S.C. §§482, 440, are *exclusively* that of the Secretary of Labor; applicant's interest is more than adequately represented by the United States Department of Labor and the United States Department of Justice; the disposition of the action will not impair or impede applicant's ability to protect any interest which he might have; applicant's claim and the main action have no common questions of law or fact; and, intervention would unduly delay and prejudice the adjudication of the rights of the original parties.

5. The claims of applicant are already being litigated in this and other courts. In Civil Action No. 3436-69 in the United States District Court for the District of Columbia, applicant for intervention Michael Trbovich is a plaintiff. In said civil action, paragraph numbered twenty-two

(22) of the Complaint, the plaintiffs allege the existence of six-hundred (600) "bogey" local unions with less than ten (10) working members, which, they allege, is contrary to the Constitution of the United Mine Workers of America. This case has been assigned to the Honorable Howard F. Corcoran, United States District Judge, and a pre-trial conference is set for October 14, 1970.

Blankenship, et al. v. W. A. Boyle, et al., Civil Action No. 2186-69, is a class action presently pending in the United States District Court for the District of Columbia. It has been assigned to the Honorable Gerhard A. Gesell, United States District Judge. The trial of that action has been set for January, 1971. A number of pre-trial conferences have already been conducted. One of the issues to be tried, as determined by Judge Gesell, is whether the raising of monthly pensions by the trustees of the United Mine Workers of America Welfare and Retirement Fund from one hundred fifteen dollars (\$115.00) to one hundred fifty dollars (\$150.00) constituted conduct violating the trustees' duty to the Fund and its beneficiaries. Plaintiffs contend there was no sound reason for increasing such pensions, but that it was only done to enhance the political election of W. A. Boyle in December, 1969. This issue was determined to be a triable issue by the Court at a pre-trial hearing held October 5, 1970.

In the United States District Court for the Western District of Pennsylvania, Civil Action File No. 70-1011, captioned *Marion Pellegrini, et al. v. Michael Budzanoski, et al.*, the International Union, United Mine Workers of America, is a defendant. This is a class action brought to compel the District 5 officers of the United Mine Workers of America to comply with the requirements of the Constitutions of the International Union, United Mine Workers of

America, and its District 5, " . . . and more specifically to *disband locals* which do not contain the *requisite ten working members* as provided in these constitutions." (Emphasis contained in Complaint.)

In each of these causes of action, petitioner for intervention is either a plaintiff or a member of the class for which the action is brought. Thus, the claims which applicant seeks to present in the instant case have heretofore been presented in other cases. Both of the aforesaid actions pending in the United States District Court for the District of Columbia were filed prior to the instant case. The granting of intervention would only lead to a multiplicity of cases involving the same issues.

6. Cases cited by applicant for intervention completely fail to establish any grounds for intervention of right or permissive intervention under Rule 24 of the Federal Rules of Civil Procedure.

Attached hereto and made a part hereof is a memorandum of Points and Authorities in support of each of the above-numbered grounds of opposition to said motion to intervene.

WHEREFORE, Defendant prays that this Honorable Court deny the applicant's motion to intervene in this cause.

EDWARD L. CAREY

[Filed October 29, 1970]

**OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION**

Comes now the defendant, by its attorneys, and opposes plaintiff's motion for a preliminary injunction, and for grounds thereof states as follows:

1. Defendant denies that it is not maintaining records on the matters required to be reported under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §436), which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary of Labor may be verified, explained or clarified, and checked for accuracy and completeness. Defendant avers that it maintains receipts, vouchers, worksheets and applicable resolutions as required by §206 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §436).

2. Upon being advised by agents of the Secretary of Labor that in their opinion some of the vouchers and receipts maintained by the defendant pursuant to 29 U.S.C. §436 were not sufficient for purposes of verification and clarification of information filed with the Secretary of Labor, defendant did institute new procedures, forms, verifications and requirements for all expense accounts submitted by employees of defendant.

Prior to the institution of the instant litigation, defendant did advise plaintiff's agents of its change in procedures, as aforesaid, and subsequently did request their approval in writing. No reply to the same was ever received from plaintiff.

Expense account records have, however, heretofore been kept in the manner required by §206 of the Act, 29 U.S.C. 436. The Secretary of Labor admits and concedes that the payment of a per diem rate or allowance does not require supporting receipts for lodging and meals. For more than 30 years, defendant, pursuant to its constitution and the direction of its International officers, has had a per diem rate or allowance for its employees. The same is true with respect to its subordinate districts. These payments have been made by check to employees only upon submission of a signed, detailed voucher. The practice is the same as that utilized by employees of the federal government.

An examination of these expense accounts demonstrates the reasonableness of the amounts permitted as a per diem rate or allowance.

Additionally, the expenses of each employee are contained in the semi-annual audit of all income and disbursements of the International Union, United Mine Workers of America. These exceptionally detailed audits are distributed to every district and local union of the United Mine Workers of America.

3. Defendant International Union operates through its International Office, located in Washington, D.C., and its twenty-five district offices, located throughout the United States and Canada. The district offices are administrative arms of the International Union located in coal mining areas.

Each of the districts maintains its own bank accounts and disburses its own expenses, including payrolls.

Thus, the books and records of the International Union are located not only at its principal headquarters in Washington,

D.C., but in each of the district offices located throughout the United States and Canada.

Each of the districts submits every month a balance statement showing all receipts and disbursements. It is more than obvious to any person examining these monthly statements that the disbursements of each of the districts, including payrolls, exceeds their monthly income. In order that these districts may function, it is necessary that they request loans or monies from the International headquarters in order to meet their current operating expenses. These requests are made in writing and their legitimacy is easily determinable by reference to the monthly balance statements submitted by the districts to the International Secretary-Treasurer.

The monies loaned or advanced by the International Union to these districts is accounted for in the monthly statements submitted by the districts to the International Secretary-Treasurer, and in the records kept by the districts pertaining to disbursements.

Thus, the "loans" by the International Union to the districts are supported by receipts, vouchers, worksheets, and other underlying data, which are maintained principally in the district offices.

In addition thereto, semi-annual audits are conducted by the International auditors of defendant in each of the districts except Districts 10, 14, 15, 21 and 27 where such audits are conducted annually. In District 18, a semi-annual audit is conducted by an outside certified public accounting firm. In Districts 6 and 26, a semi-annual audit is conducted by the districts' own elected auditors.

4. Following discussion with agents of the Department of Labor (as a result of its 1969 investigation which

terminated in December 1969) and the institution of this litigation, constituting the only formal notice received from the Secretary of Labor, all disbursements in the office of the International Secretary-Treasurer and in each of the districts are required to be supported by receipts, vouchers, and underlying supporting records by which such disbursements may be verified, explained or clarified and checked for accuracy and completeness. Specifically, with respect to organizing expenses, and any other disbursement made by cash, signed receipts are required to be obtained from the ultimate recipients of said disbursements.

With respect to expense vouchers, the same procedures, forms, verification and requirements initiated by the International Union in 1970 were similarly initiated and required in all districts at the same time or earlier.

5. Inasmuch as §206 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §436, is being fully and completely complied with by the defendant, as interpreted by the Secretary of Labor, no irreparable harm can occur to plaintiff.

6. The gravamen of plaintiff's motion for a preliminary injunction in Count II of the complaint is that the defendant *will* violate the provisions of §206 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 436, in the future. Inasmuch as defendant is now fully complying with said statute *as interpreted by the Secretary of Labor*, and has so fully complied since receiving information from the Secretary of Labor, there is no likelihood that plaintiff can successfully maintain its cause of action at trial.

7. The usual role of a preliminary injunction is to preserve the status quo pending the outcome of the litigation. The status quo is the last uncontested status which preceded

the pending controversy. In view of the fact that defendant has voluntarily accepted the interpretation of the Secretary of Labor regarding §206 of the said Act, 29 U.S.C. §436, defendant is complying therewith in the manner as interpreted by the Secretary of Labor, the Court should not change the status quo of the cause by the issuance of a preliminary injunction. To issue a preliminary injunction would grant to plaintiff the full measure of a relief to which he might be entitled only after a full trial of the cause.

It has been the policy of the International Union for many years that all medical bills incurred by International Officers, Representatives and members of the International Executive Board, not otherwise compensated by the group health insurance program in which they participate, are paid by defendant and specifically approved by the International Executive Board. Complete receipts for medical bills of President W. A. Boyle are available.

With respect to the affidavit of Henry A. Queen, attached to plaintiff's motion for a preliminary injunction, there are attached hereto and made a part hereof affidavits which demonstrate that the financial records in the offices of the subordinate districts of the United Mine Workers of America are sufficiently maintained to conclusively demonstrate that funds of the labor organization were not expended to promote the candidacy of any person of the election in violation of §401(g) of the said Act.

8. Attached hereto and made a part hereof are affidavits in support of defendant's opposition to plaintiff's motion for preliminary injunction. Said affidavits raise questions of fact which can only be resolved by taking testimony on the issues raised therein.

WHEREFORE, defendant prays that this Honorable Court deny plaintiff's motion for preliminary injunction.

/s/ Edward L. Carey
EDWARD L. CAREY

/s/ Harrison Combs
HARRISON COMBS

/s/ Willard P. Owens
WILLARD P. OWENS

/s/ Charles L. Widman
CHARLES L. WIDMAN

/s/ Walter E. Gillcrist
WALTER E. GILLCRIST

900 Fifteenth St., N.W.
Washington, D.C. 20005

Attorneys for Defendant

[Filed November 17, 1970]

ORDER

Upon consideration of applicant's motion to intervene and upon consideration of the opposition of the parties to said motion and upon consideration of the whole record in the case, oral argument having been heard on October 22, 1970, it is by the Court this 17th day of November, 1970,

ORDERED that the motion to intervene is DENIED.

/s/ William B. Bryant
JUDGE

[Filed November 17, 1970]

MEMORANDUM OPINION

This is an action by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act, 29 U.S.C.A. §401 *et seq.*, to set aside the election of defendant's officers held on December 9, 1969, and to compel defendant to maintain certain financial records. Applicant Miners for Democracy is an organization formed in April, 1970, for the purpose of bringing about reform in the defendant union; applicant Trbovich is a member of defendant union and Chairman of Miners for Democracy. Applicants seek to intervene in the action pursuant to Fed. R. Civ. P. 24(a), intervention as of right, or, failing that, pursuant to Rule 24(b), permissive intervention.

I

As for the first cause of action, it is undisputed that the *exclusive* remedy for challenging an election already conducted is a suit by the Secretary of Labor pursuant to a complaint by a union member and a determination by the Secretary of "probable cause" to believe that a violation of the law governing elections has occurred. 29 U.S.C.A. §§482, 483; *Calhoon v. Harvey*, 379 U.S. 134 (1964); *Wirtz v. National Maritime Union of America*, 409 F.2d 1340 (2d Cir. 1969). A union member himself has standing neither to bring such a suit nor to compel the Secretary to bring one. 29 U.S.C. §§482, 483, *Wirtz v. N.M.U.A.*, *supra*; *Katrinic v. Wirtz*, 62 L.R.R.M. 2557, 53 L.C. ¶ 11, 289 (D. D.C. 1966).

The legislative history of the Labor-Management Reporting and Disclosure Act makes us doubt that intervention by

a union member in a suit by the Secretary to set aside an election would be consistent with the congressional purpose. The House bill provided that complaining union members themselves, rather than the Secretary, would bring a civil action in the federal district court to enforce the election provisions. 105 *Cong. Rec.* 16,489 (1959) (remarks of Senator Goldwater). The Senate version contained substantially what was enacted, namely, that the Secretary would be the exclusive enforcer of the election provisions of the Act. *Cong. Rec., supra*. We think the fact that Congress considered two alternatives – suit by union members and suit by the Secretary – and then chose the latter alternative and labelled it “exclusive” deprives this Court of jurisdiction to permit the former alternative via the route of intervention. 29 U.S.C.A. §§482 Fed. R. Civ. P. 82.

Applicant cites us to *International Union, U.A.W., Local 283 v. Scofield*, 382 U.S. 205 (1965), as authority for allowing intervention here. *Scofield* held that the successful party in an unfair labor practice proceeding before the N.L.R.B. has a right to intervene when the court of appeals reviews the Board’s order. The main rationale of the decision was the desirability of avoiding multiple appeals. If the party successful before the Board is not allowed to intervene in the court of appeals and if the court of appeals reverses the Board and returns the case to it for further proceedings, then it is probable that the party who was not allowed to intervene in the first appeal will himself have the right to bring a second appeal. In the interests of judicial efficiency and fairness to the would-be intervenor, the Supreme Court considered it highly desirable to have the court of appeals hear all the parties in one proceeding. *U.A.W. v. Scofield, supra*, at 212, 213.

The instant case, which arises under the Labor-Management Reporting and Disclosure Act (29 U.S.C.A. §§ 401 *et seq.*), is totally different from *Scofield*, which dealt with intervention under the National Labor Relations Act (29 U.S.C.A. § 151 *et seq.*). The would-be intervenor here has not already been successful before a lower tribunal, and there is no danger of a multiplicity of appeals if intervention is denied in this case. As Professor Moore says in discussing *Scofield*, "Where the prevention of multiple appeals is not at stake, the rule should not apply." 3B *Moore's Federal Practice* ¶ 24.06[3-8], at 24-132.

The only appellate court opinion squarely on point, and it is post-*Scofield*¹, denied intervention to a union member in an action by the Secretary to set aside an election. *Stein v. Wirtz*, 366 F.2d 188 (10th Cir.), *cert. denied* 386 U.S. 996 (1966). In *Stein*, the Secretary sued to set aside the election on the basis of a complaint by the applicant for intervention that the union had refused to permit him to be a candidate for the position of Business Manager. Two months after the filing of the action, the union and the Secretary stipulated that appellant would be eligible for candidacy in the following election, to be held eight months later. The Secretary and the union requested that the case be held in abeyance until after the elections when, assuming that the union complied fully

¹ The *Stein* court did not discuss *Scofield*. Applicant ascribes this failure to the Tenth Circuit's ignorance of the *Scofield* opinion, and he points out that *Stein* proceeded *pro se* in the court of appeals. We think it highly unlikely that the distinguished court in *Stein* was ignorant of a major Supreme Court opinion of the preceding term. A more likely explanation for the failure to mention *Scofield* is that the court in *Stein* did not consider *Scofield* to be relevant to the problem before it.

with the terms of the stipulation, the Secretary would move to dismiss the action. In affirming the district court's denial of intervention, the court of appeals said:

"Although appellant's subjective dissatisfaction with the Secretary's prosecution of this action is completely understandable, yet we are constrained to agree that the District Court was without jurisdiction to permit his intervention in a Title IV action." 366 F.2d at 189.

II

What we have said against permitting intervention in the first cause of action applies also to the second cause, in which the Secretary seeks an injunction to compel the defendant union to maintain financial records from which the union's annual financial reports to the Secretary may be verified. 29 U.S.C.A. §§ 431, 436, 440. The Secretary is the one person authorized by the statute to seek such an injunction. 29 U.S.C.A. § 440.

Applicants undeniably have an interest in ensuring that union funds are spent for the sole benefit of the organization and its members. 29 U.S.C.A. § 501. They are already seeking to vindicate that interest in another suit in this court (Civil Action 3436-69) for an accounting, restitution and damages pursuant to 29 U.S.C.A. §§ 185, 501 (a) and (b). The issue in the applicants' pending suit is whether or not the union has misappropriated funds. In the instant suit the dispositive issue is quite different, namely, whether the union has failed to maintain records on the matters required to be reported to the Secretary (pursuant to 29 U.S.C.A. § 431) "which will provide in

sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness." 29 U.S.C.A. § 436.

One may not intervene as a matter of right in the litigation of others unless he shows the equivalent of being legally bound by the decree in their case. Fed. R. Civ. P. 24(a)(2); *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 694 (1961); *Apache County v. United States*, 256 F.Supp. 903, 907 (D. D.C. three-judge panel 1966).

Applicants have not made that showing here. As for permissive intervention, Fed. R. Civ. P. 24(b)(2), we do not perceive a sufficient nexus between applicants' interest and the Secretary's suit to justify it. At the same time, we believe applicants' own pending lawsuit to be an adequate means of asserting their rights.

The motion to intervene is denied.

/s/ William B. Bryant
JUDGE

Dated: November 17, 1970

[Filed December 15, 1970]

ANSWER AS TO COUNT I

First Defense

This Honorable Court lacks jurisdiction.

Second Defense

Count I of plaintiff's complaint fails to state a cause of action upon which relief may be granted.

Third Defense

The Secretary of Labor conducted an investigation of defendant's election of International officers of December 9, 1969, allegedly pursuant to 29 U.S.C. § 482(b), without having received a complaint from a member of defendant labor organization alleging violation of any provision of 29 U.S.C. § 481, including any violations of the constitution and bylaws of the defendant, pertaining to the election and removal of officers, as was required by 29 U.S.C. § 481(a). As a result thereof, plaintiff was without jurisdiction to conduct said investigation or to file Count I of the instant action. This Honorable Court is without jurisdiction to hear and entertain Count I of plaintiff's complaint.

Fourth Defense

The alleged complainant, Mike Trbovich, failed to invoke and/or to exhaust the remedies available under the constitution and bylaws of defendant, and/or any of its subordinate districts, and/or a subordinate local union, as required by 29 U.S.C. § 482(a). As a result thereof, plaintiff lacked jurisdiction: to entertain the alleged complaint of the said Mike Trbovich; to conduct any investigation pursuant thereto; and to file in this Court Count I of this complaint. This honorable court lacks jurisdiction to entertain and hear Count I of this complaint.

Fifth Defense

Plaintiff failed to institute Count I of this complaint within the jurisdictional time limits set forth in 29 U.S.C. 482(b). As a result, this Honorable Court lacks jurisdiction as to Count I of this complaint.

Sixth Defense

The original plaintiff, George Shultz, Secretary of Labor, failed to find probable cause to believe that a violation of 29 U.S.C. § 481 had occurred, and had not been remedied with respect to the aforesaid election, as required by 29 U.S.C. § 482(b). As a result, this Honorable Court lacks jurisdiction of Count I of this complaint.

Seventh Defense

The original plaintiff, George Shultz, Secretary of Labor, delegated the duty of finding probable cause that a violation of 29 U.S.C. § 481 had occurred with respect to the aforesaid election. The aforesaid delegation of the duty of finding probable cause was contrary to law. This Honorable Court lacks jurisdiction as to Count I of this complaint.

Eighth Defense

Plaintiff is not entitled to the relief prayed for in Count I of this complaint, as plaintiff is guilty of violating the equitable doctrine of "unclean hands".

Ninth Defense

Count I of plaintiff's complaint has abated.

Tenth Defense

The original plaintiff, George Shultz, Secretary of Labor, conducted an investigation of defendant's election of International officers of December 9, 1969, without authority and contrary to the prerequisites set forth in 29 U.S.C. § 482(a) and (b).

Eleventh Defense

In response to the allegations contained in Count I of plaintiff's complaint, defendant states as follows:

1. In response to the allegations contained in paragraph numbered I of plaintiff's complaint, defendant denies that this Honorable Court has jurisdiction.

2. In response to the allegations contained in paragraph numbered II of plaintiff's complaint, defendant denies that this Honorable Court has jurisdiction.

3. Defendant admits the allegations contained in paragraph numbered III of plaintiff's complaint.

4. The allegations contained in paragraph numbered IV of plaintiff's complaint allege conclusions of law and are not required to be answered by defendant. The same are therefore denied.

5. In response to the allegations contained in paragraph numbered V of plaintiff's complaint, defendant admits that an election of International officers was held among its members in good standing on December 9, 1969. The remaining allegations in said paragraph contain conclusions of law and are not required to be answered by defendant. With respect to these allegations, the same are denied.

6. In response to the allegations contained in paragraph numbered VI (a) of plaintiff's complaint, defendant admits that Joseph A. Yablonski, a member in good standing of defendant union, filed a protest by letter dated December 18, 1969. The remaining allegations contained in paragraph numbered VI(a) of plaintiff's complaint, contain, among other things, conclusions of law, and the

remaining portions of said paragraph numbered VI(a) are denied.

In response to the allegations contained in paragraph numbered VI(b) of plaintiff's complaint, defendant avers that the same are completely immaterial and irrelevant, and allege conclusions of law. The same are therefore denied. It is admitted that plaintiff did conduct an investigation.

In response to the allegations contained in paragraph numbered VI(c) of plaintiff's complaint, defendant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies the same.

7. The allegations of paragraph numbered VII of plaintiff's complaint are denied.

8. All of the allegations contained in paragraph numbered VIII of plaintiff's complaint are denied. Specifically, defendant denies all the allegations contained in paragraph numbered VIII(a), VIII(b)(i) and (ii), VIII(c)(i) and (ii) and (iii) and VIII(d).

9. The allegations contained in paragraph numbered IX of plaintiff's complaint are denied.

WHEREFORE, defendant prays that this Honorable Court enter judgment with costs in favor of defendant, and dismiss Count I of plaintiff's complaint with prejudice.

ANSWER TO COUNT II

First Defense

This Honorable Court lacks jurisdiction.

Second Defense

Count II of plaintiff's complaint fails to state a cause of action upon which relief may be granted.

Third Defense

Plaintiff is not entitled to the relief prayed for under Count II of this complaint, as plaintiff is guilty of violating the equitable doctrine of "unclean hands".

Fourth Defense

In response to the allegations contained in Count II of plaintiff's complaint, defendant states as follows.

1. The allegation contained in paragraph numbered I of Count II of plaintiff's complaint contains a conclusion of law and an allegation of jurisdiction which defendant is not required to answer. Defendant therefore denies the same.

2. Defendant denies the allegation contained in paragraph numbered II of Count II of plaintiff's complaint.

3. Defendant incorporates herein by reference its answer to paragraphs III and IV of this complaint relating to the first cause of action in response to the allegations contained in paragraph numbered III of Count II of plaintiff's complaint.

4. The allegation contained in paragraph numbered IV of Count II of plaintiff's complaint state a conclusion of law which defendant is not required to answer, and defendant therefore denies the same.

5. Defendant denies the allegations contained in paragraph numbered V of Count II of plaintiff's complaint.

Fifth Defense

Count II of plaintiff's complaint is moot.

WHEREFORE, defendant prays that this Honorable Court grant judgment with costs in favor of defendant, and dismiss Count II of plaintiff's complaint with prejudice.

In further answer to all the allegations contained in Count I and Count II of plaintiff's complaint, defendant denies each and every allegation therein contained not herein specifically admitted or otherwise answered.

/s/ Edward L. Carey
EDWARD L. CAREY

/s/ Harrison Combs
HARRISON COMBS

/s/ Willard P. Owens
WILLARD P. OWENS

/s/ Charles L. Widman
CHARLES L. WIDMAN

/s/ Walter E. Gillcrist
WALTER E. GILLCRIST

Attorneys for Defendant

900 Fifteenth Street, N.W.
Washington, D.C. 20005
638-0530

[Filed April 27, 1971]

Appeal from the United States District Court of Columbia.

Before: .WRIGHT, TAMM and ROBB, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. See Local Rule 13(c).

On consideration of the foregoing, and this court being in substantial agreement with the memorandum opinion filed by the District Court, *Hodgson v. United Mine Workers of America*, 51 F.R.D. 270 (1970), it is ordered and adjudged by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam

SUPREME COURT OF THE UNITED STATES
No. 71-119, October Term 1971

MIKE TRBOVICH,
Petitioner

v.

UNITED MINE WORKERS OF AMERICA

On petition for writ of Certiorari to the Court of Appeals for the District of Columbia Circuit.

The petition for a writ of certiorari is granted.

October 19, 1971.

ADDENDUM TO SECRETARY OF LABOR'S
BRIEF IN THE COURT OF APPEALS

LAW OFFICES
RAUH AND SILARD

1001 Connecticut Avenue, N.W.
Washington, D.C. 20036

Joseph L. Rauh, Jr.
John Silard
Elliott C. Lichtman
Daniel H. Pollitt
Harriett R. Taylor

202-737-7795

February 21, 1970

The Honorable George P. Shultz
Secretary of Labor
U.S. Department of Labor
Washington, D.C. 20210

Dear Mr. Secretary:

For over 7 months the Yablonski forces inside the United Mine Workers have been determinedly and honorably pleading for just one thing: that you do your duty as Secretary of Labor and enforce the Labor-Management Reporting and Disclosure Act of 1959 against the UMWA. For those 7 months your answer to us has always been "no". And, as we contemplate the wholly pusillanimous investigation that your Department is presently making, we fear that your answer remains "no" even today — or, what is just as bad, that you will seize upon the narrowest possible ground to upset the election.

Time and again we have asked for Labor Department action. Back in July and August we detailed over a hundred violations of LMRDA and asked you to use your admitted authority under Section 601 to investigate those violations. In your office on July 24, 1969 I told you that if the Department of Labor failed to enter the case there would be violence and more violence and this would

be on your conscience and yours alone. You turned a deaf ear and thus courted that very violence which has now occurred. On December 1 we brought the sorry record of the illegal activities of Tony Boyle and his henchmen up to date. We asked you to start an investigation at once and to station an agent at every polling place. We pointed out that "if the incumbent UMWA officers are allowed to steal this election on December 9th with the Department of Labor standing by, then everyone will know that enforcement of this law is a joke." Again you turned a deaf ear; again our predictions came true. Immediately after the election, we asked you to start an investigation and to impound the ballots and tally sheets to prevent their alteration. Again you turned a deaf ear; and now, as you can see from the Canadian Appendix, *tally sheets have been altered*. Finally, after the triple murder in January, we made one last desperate request for an investigation. Although your public relations people talked about putting 200 investigators in the field as your answer to our charges of inaction, all that they did is play "patty-cake" with the Mine Workers and even that type of investigation ended quickly. We had feared that the Labor Department would be more interested in justifying its failure to investigate prior to the election than in providing an all-out basis for a new election to bring democracy to the union. Our fears have been fully justified by the weak and inadequate nature of its investigation.

Mr. Secretary, you and your advisers are apparently the only people in the whole United States who do not know how rotten things are in the Mine Workers. Why do you refuse to see what even a blind man could not miss? Is it the influence of Mr. Usery who denounces the Yablonski group with allegations that they accepted money from

Walter Reuther and the UAW (a false statement which Joseph A. (Chip) Yablonski under oath denied as "garbage" before the Senate Labor Subcommittee)? Is it your lawyer's prattlings about "volunteerism" in the labor movement and Mr. Silberman's desire to play the wheeler-dealer role with the UMWA? Or is it your own personal desire not to take any steps of which the powerful UMWA might not approve? We do not know your motivation for inaction and apathy in the face of tyranny and violence, but there is one thing we do know: We shall keep up this fight, whatever you do, because the American people will not forever tolerate bureaucratic indifference to UMWA corruption any more than they would in the case of the Teamsters. The Yablonski supporters will *never* let you sweep this mess under the rug.

The evidence which we have presented to you over a 7 month period demonstrates beyond peradventure of doubt that the December 9th election must be set aside for each of the following four reasons:

1. Pre-election violations of law, including the massive use of union personnel and the union treasury, require a new election.
2. The voting of pensioners through unconstitutional bogey locals was obviously unlawful and requires a new election.
3. The over a hundred violations on election day, which Joseph A. (Chip) Yablonski recounted in his Affidavit, were probably matched some tenfold by those about which we have no information and these, too, require a new election.
4. The incidents of violence and the atmosphere of intimidation and fear made a fair election impossible, and require a new election.

Your investigation has failed to deal at all with points 1, 2, and 4 and has been woefully inadequate on point 3. One can only conclude from this half-hearted investigation that, while you feel the need to avoid a public outcry if you failed to set aside the election, you have decided to act on some technical ground rather than on a basis that will get to the rest of the corruption, violence and tyranny in this union. We deal below with each of the four matters you should have investigated.

1. The Department has done nothing to investigate the preelection violations of law, especially the massive use of union personnel and the union treasury. In my letter to you of January 13, 1970 we asked that the Department examine every voucher and every expenditure of the UMWA during 1969; we asked that you interrogate all UMWA personnel (in the field and in the head office) and all the additional personnel added to the payroll during 1969. You have done virtually nothing about this. Joseph A. (Chip) Yablonski outlined in his testimony before the Senate Labor Subcommittee the steps your Department would have to take to conduct a real investigation of the UMWA election: (i) lists of all persons employed at all levels of the union must be made for 1968 and 1969 and compared; only in this way can the extent to which the UMWA unlawfully padded its payrolls be made known; (ii) all expense vouchers for this period must be carefully scrutinized to ascertain how much really went to the incumbents in the form of kickbacks to finance their reelection. (Privately we have been told that your staff regards this as an impossible task at this late date. We do not think it is. Moreover, had you begun your investigation when we first requested that you do so, the job would have been far easier); (iii) detailed itemized statements of all expenditures and income for all branches of the union,

including the bogey locals, must be prepared and scrutinized with particular emphasis on money spent on postage, printing, telephone, and secretarial expenses to ascertain how much of the union's treasury was used to bankroll directly the incumbents' reelection bid; (iv) all loans to union personnel and union officers by the National Bank of Washington must be examined to determine how much of the incumbents' election expenses were financed by the union itself through the bank which it owns; (v) a list should be made of all union and union-related bank accounts in the National Bank of Washington and other banking institutions to determine how much of this money was siphoned from these accounts into the officers' campaign chest; (vi) a close study should be made of the relationship between the National Bank of Washington and other banking institutions — inter-bank loans should be bared and the union's loans to all closely held corporations and coal companies should be revealed along with the terms and amounts of these loans. Despite the fact that the transcript of this testimony was immediately made available to you, nothing was done to investigate along these lines either. The ineffectual nature of your investigation of the massive and illegal use of UMWA funds and personnel was demonstrated to us once again this week when several highly-respected miners from District 31 came into our office and told us of 13 men added to the UMWA payroll in 1969 to work for Boyle. Your people never even bothered to seek them out; they came to you of their own volition to make the facts known.

2. The Department has done nothing to investigate the illegal voting of pensioners through 600 bogus local unions. Mr. Boyle in his release of February 13 states that "Charges that there are 600 allegedly bogus locals in the UMWA were dismissed by federal district court in

Washington, D.C. during the election campaign." We do not know if this "Boyleism" is the reason for your inaction in this area, but we do know that his statement is false. Local unions, under the UMWA Constitution, are "composed of ten or more workers, skilled and unskilled, working in or around coal mines . . ." Secretary-Treasurer Owens in that pre-election case stated under oath that "there are some six hundred" local unions which do not report "because they are not workers in the mines" (Tr. 118). Far from rejecting our claim that the maintenance of these locals without workers in the mines was in violation of the UMWA Constitution, Judge Hart indicated that he was sympathetic to our assertion (Tr. 232, 236), but that since the case was being heard only a month before the scheduled election it was "too late" for him to force the union to disband all those locals and transfer their members to lawful, working locals (Tr. 232). He further indicated, "I think the Secretary of Labor can probably take care of that one" (Tr. 238). Sadly for the forces of reform in the UMWA, Judge Hart's confidence in the Secretary of Labor, like our own, was wholly misplaced.

3. With respect to the election day violations, the inadequacy of the Department's investigation can be shown in many ways, but the simplest thing is to take a look at just one of our statements of violation. Paragraph No. 61 of the election day violations covered by the Yablonski affidavit reads as follows:

"In Canada, in UMWA Districts 18 and 26, pensioned miners voted in their first International election, though they are not qualified to vote. The margin given Boyle in District 26 (Nova Scotia), 2677 to 470, is in large

measure due to the illegal pension vote since most of the active mines have closed down. Local officers in one active Canadian local were offered \$50.00 apiece by District Representative Marsh to tabulate the unlawful pensioner vote, but they refused.

This statement was true as far as it went, but, as the Canadian Appendix to this letter demonstrates, the actual facts — never investigated by you but now handed to you on a silver platter — are far worse. Among other things, that Appendix shows that tally sheets were altered and another forged after the election. We told the Labor Department in December that this was going to happen, but we were scoffed at as we had been for so many months. Now we have the sworn proof that it did happen. Yet, despite the fact that we handed your Department on a silver platter the proof of altered and forged tally sheets, your investigators have made no effort to follow-up with a general investigation of other places where the tally sheets were likewise altered or forged. Equally outrageous, your Department stood idly by while the UMWA violated its constitution and its assurances to Judge Hart in failing to print and mail out the votes of each local by January 15, 1969, thus giving additional time for manipulation and falsification.

President Boyle knew where the Yablonski forces had no watchers and how to fake the results in those places. This was not just true of Canada. Within the past few days, we received for the *first* time the UMWA "official" local-by-local tally. It is utterly appalling that your people apparently had this information in their possession since January 26, 1970, and did not make it available to us or even inform us that you had it. Mr. Secretary, are

you trying to keep us in the dark? Does it make your job easier if the party on whom you have placed the burden of proof is not given notice of what figures he must disprove?

Nonetheless, in the short time we have had to examine these "official" results, we have pinpointed their inherent lack of credibility. For example, out of all the locals listed, in only two (2) did Boyle fail to receive a vote, while Yablonski was shut-out in three hundred and three (303) locals. In more than one-third of all the locals, 455 to be exact, Mr. Yablonski received two or less votes. The Yablonski forces did not have an observer in 98% of these locals; 90% of these locals are bogus locals, which are not even recognized by the Department as "labor organizations"; and their polling places were kept a deep, dark secret as the information already furnished to your investigators reveals.

In the UMW's infamous Districts 19 and 20 Boyle supporters outdid themselves in the absence of Yablonski observers. Mr. Yablonski was denied a vote in 90 of the 127 locals that "voted". It comes as no surprise to us that District 19's "official" tally (3737 to 88) is almost identical with the initial figure posted at Boyle election headquarters in the UMW Journal office at 8:00 p.m. on the night of December 9, 1969 (3725 to 87). The Alabama (District 20) figures similarly defy imagination. For example, look at these vote totals for Boyle: 98-0, 66-0, 87-0, 64-0, 373-2, 117-0, 280-2, 156-2, 92-0, 90-0, 75-1, 352-1, 145-1. In all of District 21, where Mr. Yablonski did not have a single observer, he received 9 votes, and was defeated by an astonishing ratio of 77 to 1. And even in a spot check of our observer reports which we furnished you, we note that certain reported returns do not accord with

the returns reported to us. Thus, for example, R. C. Owens, son of Secretary-Treasurer Owens, ran the election in Local 6, District 6. There our two observer reports indicate that Boyle received only 8 votes — the official tally, however, records 67 votes for Boyle and 2 for Mr. Yablonski. Mr. Secretary, I submit these figures are patently fraudulent.

There is adequate ground for overruling the election on these election day illegalities alone despite your once-overlightly investigation. But the fact remains that the other three grounds for setting aside the election — which your investigation has not even touched — are even more significant and more determinative. We turn now to the most determinative one of all, the violence in this union.

4. It is not possible to repeat in detail all of the charges of violence and threatened violence to Mr. Yablonski and his supporters that we made during the course of these past months. Illustrative of those assertions are the following: we told you Mr. Yablonski had been brutally attacked in Springfield, Illinois on June 28; we told you a rally of his supporters had been forcefully broken up in Shenandoah, Pennsylvania the following day; we told you that John Aiello telephoned Mr. Charles Shawkey, a Yablonski supporter, on July 19 and threatened to kill him; we told you that Mr. James Torma had been threatened by Joseph C. Morris and that Mr. Torma and his wife had been harassed by threatening phone calls. As Chip Yablonski told the Senate Subcommittee, "In every rally, in every coal mining town, from the anthracite regions of Pennsylvania to Kincaid, Illinois, that same fear prevailed. Every meeting was routinely attended by Mine Workers officials who made known their presence, who welcomed to the rally individuals they knew personally.

They all carried notebooks and tape recorders, and in some instances I was told there were even cameras present."

We warned you concerning these and similar incidents. As early as July 9th, we wrote you: "What we have set out . . . is only the part of the iceberg above the water line. The terror inside a union where a candidate for President is knocked unconscious and where a rally for that candidate is broken up by goons is even greater when it comes to the individual members." That reign of terror — abetted by bureaucratic indifference — made a fair election wholly impossible.

Some of the violence connected with this election and with efforts to reform the UMWA were unknown *even to us* until after the brutal murders of the Yablonskis encouraged some people to come forward with the facts of the terror they felt due to repeated threats to themselves and their families.

Thus *Life* magazine reported that Dr. Hawey Welles, who campaigned for Mr. Yablonski, came home one night to a ransacked home and on another occasion found that the gas tank of his airplane had been stuffed with pine cones and leaves — he would surely have been killed had he flown the plane that day.

And Mr. Harry Huge, an attorney formerly with the Washington Research Project and now at Arnold and Porter, who filed a lawsuit against the UMWA aimed at correcting abuses in the administration of the union's welfare fund, gave the following account of a series of harassing incidents to the F.B.I. at their request:

"The law suit was filed against the U.M.W.A., the Welfare and Retirement Fund, and the National Bank of Washington on August 4, 1969.

On August 19 some kind of black grease or dust was smeared on the steering wheel of my automobile. On August 20 my wife and two-year-old son were followed home from a playground near our home by a man dressed in casual clothes with a complex camera around his neck. When my wife arrived at home, she noticed a car with Ohio license plates, cream-colored, two door, American made, and relatively new. There was a young man in casual clothes in the area in front of the house, and the car was directly in front of the house. Several minutes later the Ohio car picked up the man with the camera. The car had three people in it — a man with red hair, a woman, and another man.

"On September 6, 1969, I was leaving my house at approximately 8:30 a.m. to catch a flight to Charleston, West Virginia, when a red car with a black vinyl top, two door, late model like a Mustang or a Cougar, started up across the street and sped past me. The driver gave a motion with the flat of his hand across his neck or chest. He was a white man about thirty-five or forty years old with black hair. When I tried to start my car, it didn't turn over. The battery wasn't run down because the radio worked. I later learned from the garage that the wires to the distributor caps had been pulled loose or cut."

Violence pervaded and infected the election process from one end of the coal fields to the other. No miner

— at least anti-Boyle miner — felt safe during the election process, just as none feels safe today. Fear may be difficult to measure, but no one could reasonably contend that fear and violence may not “have affected the outcome” of this election — the statutory standard for setting aside an election under LMRDA.

Each of the four grounds we have set forth above *may have affected the outcome* of the election; put together they *obviously did affect it*. Your duty to hold another election (after further nominations) is clear.

We do not know, of course, what your decision will be. From the day Mr. Yablonski started his fight on May 29, 1969 you and your Department have treated him and his reform group — whose only crime was a fervent desire to bring democracy to the United Mine Workers and end the present reign of corruption and tyranny — as untouchables who did not deserve even the protection of the law of the land.

We know we cannot affect your decision, but we do have the right as American citizens to demand answers to our verified evidence of violations of law. *We ask that you give us an answer point by point to each illegality we have charged.* We ask you to take each such illegality separately and tell the public whether it was proven, erroneous, or not investigated. We ask for an answer (i) to each and every allegation of UMWA wrongdoing in my letters to you, (ii) to each and every allegation in the affidavits of Joseph A. (“Chip”) Yablonski and Mrs. Clarice Feldman in the December 18 election challenge letters, and (iii) whether, in addition to the Mine Workers Journal, union funds and union personnel were used to further the reelection of the incumbent International officers, including the degree to which each union employee devoted his

time and the money in the International, District or local treasury to advance the candidacy of Boyle and his ticket.

Your decision on this matter will be credible only if you tell the whole story by answering each and every allegation the Yablonski forces have made - proven, erroneous, or not investigated. Then the public can decide whether you have done your full duty - not only to set aside the election but to base this action on the full record of corruption, violence and unlawful activities of the incumbent officers and their supporters.

Sincerely yours,

/s/ Joseph L. Rauh, Jr.
Joseph L. Rauh, Jr.

**STATEMENT BY SECRETARY OF LABOR
GEORGE P. SHULTZ ON
UNITED MINE WORKERS INVESTIGATION
MARCH 5, 1970**

The Department of Labor has completed its investigation of the December 9, 1969, election of officers in the United Mine Workers of America and today, on behalf of the Secretary of Labor, the Justice Department filed an action under Titles II and IV of the Landrum-Griffin Act to set aside that election and to enjoin the union from inadequate recordkeeping.

The allegations are as follows:

1. The Union failed to provide adequate safeguards to insure a fair election, including permitting campaigning at the polls.

2. The Union denied candidates the right to have observers at polling places and at the count of ballots.

3. The Union failed to conduct its election in accordance with its constitution, including the failure of many local unions to elect tellers and to hold a membership meeting to set the time and place of the election.

4. The Union failed to elect its international officers by secret ballot among the members in good standing in that many members were required or permitted to cast their ballots in such a manner that the member voting could be identified with the choice expressed.

5. Members were denied the right to vote for or otherwise support the candidate or candidates of their choice without being subject to penalty, discipline, or improper interference or reprisal.

6. Members were denied the right to vote, in that elections were not conducted in some locals.

7. The Union used money received by it as dues, assessments, or similar levies, to promote the candidacy of its incumbent international officers, including but not limited to use of the union's official publication, district offices, property, and other facilities.

8. The union has failed and is still failing to maintain records and to require its subordinate Districts to maintain records on matters required to be reported under the Landrum-Griffin Act which provide in sufficient detail the necessary basic information and data from which documents filed with the Department may be verified, explained or clarified and checked for accuracy and completeness.

These allegations come from the complaint which is available to you today.

The Government has also asked the Court for a preliminary injunction to keep the United Mine Workers and its officers from spending union funds without reporting to the Department as required by Title II of the Landrum-Griffin Act.

The complaint grew out of the most widespread and painstaking investigation in the history of the Landrum-Griffin Act. The investigation involved intensive work by more than 200 investigators over the last two months.

I take this occasion to express my personal appreciation to these Labor Department employees who worked so hard and long on this assignment.

As you know, it would be improper for us to discuss the evidence supporting these allegations before that evidence is presented to a judge. Thus, we are limited in the press and other media to describe the documents filed in the court.

U. S. DEPARTMENT OF LABOR

Press Conference

by

THE HONORABLE GEORGE P. SHULTZ

Secretary of Labor

Date: March 5th, 1970

Time: 4:40 p.m.

Conference Room 102

U.S. Department of Labor

Washington, D.C.

ATTENDEES:

Laurence H. Silberman, Solicitor of Labor

W. J. H.

SECRETARY SHULTZ: The Department of Labor has completed its investigation of the December 9, 1969 election of officers in the United Mine Workers of America. Today, on behalf of the Secretary of Labor, the Justice Department filed an action under Titles II and IV of the Landrum-Griffin Act to set aside that election and to enjoin the Union from inadequate record-keeping. The allegations are as follows:

(1) The Union failed to provide adequate safeguards to insure a fair election, including permitting campaigning at the polls;

(2) The Union denied candidates the right to have observers at polling places and at the count of ballots;

(3) The Union failed to conduct its election in accordance with its constitution, including the failure of many local unions to elect tellers and to hold a membership meeting to set the time and place of the election;

(4) The Union failed to elect its international officers by secret ballot among the members in good standing, in that many members were required or permitted to cast their ballots in such a manner that the member voting could be identified with the choice expressed;

(5) Members were denied the right to vote for or otherwise support the candidate or candidates of their choice without being subject to penalty, discipline or improper interference or reprisal;

(6) Members were denied the right to vote in that elections were not conducted in some locals;

(7) The Union used money received by it as dues, assessments, to promote the candidacy of its incumbent

international officers, including but not limited to the use of the Union's official publication, district offices, property and other facilities;

(8) The Union has failed and is still failing to maintain records and to require subordinate districts to maintain records on matters required to be recorded under the Landrum-Griffin Act in sufficient detail the necessary and basic information and data from which documents filed with the department may be verified, explained or clarified, and to check for accuracy and completeness.

These allegations come from the complaint which is available to you today. I believe that will be distributed.

The Government has also asked the court for a preliminary injunction to keep the United Mine Workers and its officers from spending Union funds without reporting to the Department as required by Title II of the Landrum-Griffin Act.

In our complaint to the court we cite the most widespread and painstaking investigation in the history of the Landrum-Griffin Act. The investigation involved intensive work by more than 200 investigators over the past two months. I take this occasion to express my personal appreciation to these Labor Department employees who worked so hard and long on this assignment.

As you know, it would be improper for me to discuss the evidence supporting these allegations, before that evidence is presented to a judge. Thus, I am limited in the press and other media to describe the documents filed in court.

The Solicitor for the Department of Labor is here, and the Assistant Secretary in charge of this investigation is

here. We will be glad to respond to your questions. I guess, unlike my usual practice of dealing with questions in a cavalier manner, since there is a law suit involved here, I will probably rely on my legal and other advisors.

QUESTION: Mr. Secretary, how soon will the court action come to a head; when will there be some action in court? Do you know?

SECRETARY SHULTZ: We'll bring in the lawyer here.

MR. SILBERMAN: The Motion for Preliminary Injunction, based on a violation of Section 206 of the Landrum-Griffin Act, a violation of the record-keeping departments, we expect to be able to come into court for argument probably within a month.

QUESTION: What about the issue of setting aside the election?

MR. SILBERMAN: We will do everything within our power to expedite that. Of course, that's up to the court. That is not in the nature of the injunction; that's the statutory scheme. But in the statutory scheme, we can assure you we will do everything in our power to bring it up as soon as possible.

QUESTION: What are the arrangements for setting a new election date and determining that whole question, Mr. Secretary?

MR. SILBERMAN: I'm sorry; I am not sure I understand your question.

QUESTION: Will it be the Department who will determine a new election and when it will be set, what conditions and so on?

MR. SILBERMAN: Under Title IV of the Landrum-Griffin Act we don't have the power to set the election. We must go to court and present the case to a judge and seek an order from him ordering a new election under the Secretary's supervision.

QUESTION: With appeals and so forth, might not that absorb an entire term of the incumbent? It has in the past, at least in two-year terms. Isn't it possible to go four years with appeals?

MR. SILBERMAN: That's up to the court, of course. All I can say is, we will assure you we will do everything we can within our power, and in the Justice Department's power, to expedite the proceedings.

QUESTION: Is it correct that if you win in the District Court, that language of Landrum-Griffin prevents a stay, or can they get a stay while they appeal?

MR. SILBERMAN: You are correct on the first instance.

QUESTION: In other words, the appeal might proceed at the same time the election is being supervised?

MR. SILBERMAN: That's correct.

QUESTION: Does the complaint mention the Yablonski murder?

MR. SILBERMAN: The complaint does not mention the Yablonski murder.

QUESTION: Mr. Secretary, are you aware of any other possible action that might be pursued by the Justice Department with respect to possible criminal charges stemming from any of this?

SECRETARY SHULTZ: No, I am not aware of any.

QUESTION: Are you referring these files over to the Justice Department for that purpose?

MR. SILBERMAN: We have worked very closely with the Justice Department throughout our investigation, in the sense that they had a parallel investigation going on during the same period that we had our investigation. Of course, it is not our charge or responsibility to investigate the murder. We did everything we could to keep that apart from the election case.

On the other hand, with Justice, there were matters where we did dovetail and we traded information back and forth.

QUESTION: So far as you know, this will not necessarily conclude the matter and the Justice Department may continue its investigation?

MR. SILBERMAN: That depends on what you mean by "this matter".

QUESTION: Mr. Secretary, do you think the action you have announced here vindicates you and your Department from the charges from some quarters a few months back, that you were "dragging your feet" on such an investigation?

SECRETARY SHULTZ: We don't think we were dragging our feet, and we are not here seeking vindication — not vindication, but we have been trying to carry out our responsibilities under the law as we have seen them. We have moved with great effort and energy on this. We were able to move as rapidly as we have because of the waiver by the United Mine Workers of the waiting period that we

would have otherwise have had to wait for. We feel we have done this properly.

We have observed the effort of the Department here, the people in the Department and the various sections. They really have pitched in and worked terrifically hard to conduct this broad and extensive investigation. It is quite a job, with a very short time to do it.

QUESTION: Mr. Secretary, a good many of these allegations were made and known prior to the election. Why couldn't they have been acted upon at that time?

MR. SILBERMAN: Well, these certain allegations were presented prior to the election, but under the scheme of the Landrum-Griffin Act, however, the power to go to court is limited to a post-election investigation by the Secretary.

Although there is general investigatory power under Section 601 that the Department could theoretically use prior to the election, it has no enforcement power at that time; thus, it has been the Department's view that Congress intended as much as possible to limit investigations of union elections to a post-election situation, since it is only at that time that we have any power to enforce a remedy. We much prefer looking at the scheme of the statute and the policy, to wait until that time.

There is also this aspect, that it is very difficult to conduct an investigation while the election is in progress. After it is over, it is a more esthetic situation to go back and re-create it. While the election is going on there is a great deal of hurly-burly and it is tough to pin it down.

QUESTION: Mr. Secretary, are you prepared now to go before the Senate Labor Subcommittee and defend

your actions, specifically your decision not to investigate?

SECRETARY SHULTZ: Well, we have to go before the Senate Labor Committee to testify and provide information and my own thoughts on this whole subject.

Of course, there will have to be certain ground rules for that, because, as I understand it, when we have a case before the courts it would not be proper to present evidence to a Congressional committee, or detail it here to you, pending trying our case before the courts. So we will try our case before the court as we are supposed to do. But subject to certain ground rules about just what will be gone into and what will not, I certainly will be glad to testify before the Committee.

QUESTION: Mr. Secretary, you said — I'm sorry. The Solicitor said a moment ago that you could not move in court under Title VI. Does this mean the report you issued just prior to the election, you won't be able to take any action in court on those facts?

SECRETARY SHULTZ: The report that we issued just prior to the election was the result of an investigation undertaken before the election started; before there was ever any election contest at all we had started that investigation, and we pursued it.

Following our policy of releasing the information when it becomes available, as a result of an investigation of that kind in which we just make the results public, we released it at the time the investigation was concluded. It was not timed particularly in terms of the election; it wasn't started because of the election. It was started beforehand. The results of it were released when the investigation was completed.

QUESTION: Is the Justice Department pursuing with that report, do you know?

SECRETARY SHULTZ: Do you want to comment on Justice's work on that earlier report?

MR. SILBERMAN: Could you repeat your question?

QUESTION: Is the Justice Department proceeding the report that you transmitted just before the election?

MR. SILBERMAN: They have pursued an investigation based on that report, yes. They haven't included it entirely, although to a certain extent our injunction, based on a violation of Section 206, draws a little bit upon that report.

QUESTION: Is it unlikely then that there would be any criminal prosecution flowing from that?

MR. SILBERMAN: I don't think I could comment on that. You would have to ask the Justice Department.

QUESTION: What about the Canadian investigation, Mr. Secretary? Is that squared away — District 26, is it?

MR. SILBERMAN: Well, we tried to investigate, as you may know, and the Canadian Government refused to allow us to go into that. So I am afraid we were stymied on that question.

QUESTION: If the court sets aside the election, will you ask for Government supervision of a new election in terms of monitoring?

MR. SILBERMAN: The remedy which the court applies in this kind of case is a new election, supervised by the Secretary of Labor.

QUESTION: So would there be Government poll-watchers or what? What does that mean?

MR. SILBERMAN: You mean how do we supervise an election?

QUESTION: Well, in a case here where you have got widespread locals.

MR. SILBERMAN: It takes a great deal of manpower.

QUESTION: Have you ever done it?

MR. SILBERMAN: Yes, we have. In an international election, the NMU, and I suppose we are going to be faced with the Retail Clerks, too.

QUESTION: The NMU is a different type—

MR. SILBERMAN: You're correct; this is going to be a difficult job for us. But we will just have to get the manpower to do it and do it right.

QUESTION: Mr. Secretary, does this action today have any effect on Tony Boyle's ability or right to take office for his new term, which I think begins in a few weeks?

MR. SILBERMAN: No, it does not. The structure of the Landrum-Griffin Act is quite clear on that. Congress debated that at some length back in 1959 and decided that the incumbent would be entitled to remain in that office until the court ordered a new election. There is nothing we could do to interfere with that scheme.

QUESTION: Mr. Solicitor, could you outline for us the various legal steps, court steps, that the Labor Department and Justice Department must follow to bring your case to a conclusion?

MR. SILBERMAN: There are two counts. Let me take the second count first. That's the motion for an injunction, preliminary injunction, restraining the inadequate record-keeping which is presently going on. That, I believe, we will get to court because it is an injunction and the courts hear injunctions quicker than other kinds of cases, relatively quickly. I think we might have a decision on the injunction itself within months.

Now, with respect to the election, although we will do our best to press the matter before the court, the Respondent is entitled to go through certain steps of discovery proceedings and the presenting of evidence at the trial, and, of course, we would present evidence, too. But the question of when that case comes to trial is largely dependent upon the court's docket.

QUESTION: Mr. Secretary, this long list of particulars that you gave us, does it describe anything more than inadvertence or carelessness?

MR. SILBERMAN: I think the complaint really has to speak for itself. As the Secretary said in the beginning, it would be improper for us to describe the nature of the allegations. I think if you read those allegations, however, you might reach a different conclusion than that inferred by your question.

QUESTION: Do you relate one to another? Is this a systematic thing? You have given us this long list, but is one related to the next? Was there a systematic attempt to deprive Mr. Yablonski of his right to be fairly elected?

MR. SILBERMAN: That would be an improper question for me to answer either way. You are characterizing the defense they may raise or the evidence they may present.

QUESTION: Will this ultimately require a jury trial?

MR. SILBERMAN: It could. Generally they are inequity proceedings, so there would not be a jury trial.

QUESTION: Mr. Secretary, how much cooperation did you get from the Union in your investigation? Was there any obstruction?

MR. SILBERMAN: I think Mr. Usery, the Assistant Secretary, would say, as I have heard him say on several occasions today, that we must state that the Union did cooperate with us in almost every respect in providing us with the matters we needed to evaluate the election.

QUESTION: Mr. Solicitor, I don't understand something that was said earlier, if the union cooperated. You had these allegations before the election, and clearly, if the allegations turn out to be true, the election then you would have to attempt to void, why not could you then investigate the law and investigate the election while it was going forward.

MR. SILBERMAN: One of the things it seems to me you must be cognizant of is that when allegations are presented to us there is no way that you can determine whether they are meritorious or not without making an investigation.

In a pre-election situation, when you make an investigation you automatically have an impact on the results of the election. Congress considered that and that is why it seems to us that they came down heavily on the side of a post-election investigation. Because when the Government goes in during the election it can't but help have an effect on the election. That is something generally the Government should really want to avoid.

QUESTION: Is there anything in — What procedures would you follow in controlling the assets of the Union in the course of this litigation?

MR. SILBERMAN: The injunction which seeks an order requiring them to abide by the record-keeping provisions of Section 206 of Title II obviously would have imposed restraints, as those record-keeping requirements do. That is the limit, however, of the remedies we conceive.

QUESTION: How do you establish the restraints and how do you monitor them?

MR. SILBERMAN: Because under Title II they must report to us how they expend their funds; under 206 they must report the vouchers, expenditures and so forth. It is that kind of thing that they haven't been reporting.

QUESTION: Would you establish the monitoring headquarters, or would it be kind of an arm's length procedure?

MR. SILBERMAN: Well, that would be up to the court to determine, as to precisely the nature of the order they would issue. I doubt, however, that the court would order a monitoring procedure.

QUESTION: Would this be a weekly or monthly report?

MR. SILBERMAN: Again, that goes to the court's order. I would rather not comment on the exact nature of the order.

QUESTION: Do you have to establish a special task force to survey this stuff, the material that comes in?

MR. SILBERMAN: Secretary Usery has a group which is now responsible for reviewing the reports of unions, which are required to report under Title II of the Act.

QUESTION: That, I know. But I am talking about the massive nature of this particular case, with the type of —

MR. SILBERMAN: I think Mr. Usery would have to wait and see what the nature of the court order would be and what would be the best way to carry out that order.

QUESTION: How many actions have been filed since late '59?

MR. SILBERMAN: I'm sorry, but I don't have that at my fingertips. However, I am sure Mr. Usery's staff will provide that for you within a matter of 15 or 20 minutes.

SECRETARY SHULTZ: The question, are you talking about international unions versus — I think it is a relatively small number.

QUESTION: Mr. Secretary, is there anything in this proceeding that would prevent the incumbents from running a again in a new election?

MR. SILBERMAN: The answer is No.

QUESTION: Mr. Secretary, are you confident this matter would have been as fully investigated and you would have gotten this far had it not been for the murder of Joseph Yablonski?

SECRETARY SHULTZ: I am sure we would have investigated it, yes.

QUESTION: In any event?

SECRETARY SHULTZ: Yes. On the other hand, it may not have been the case where we have been able to move as far because of this exhaustion of internal remedies. I think you would have to ask the Mine Workers whether that had an impact on their willingness to waive that right.

QUESTION: Was there any special emphasis as far as you and the Department were concerned?

SECRETARY SHULTZ: We had been watching this election and concerned about this situation right along.

QUESTION: So it made no difference?

SECRETARY SHULTZ: No.

MR. SILBERMAN: You might note the Department has already investigated international elections very seriously.

QUESTION: Mr. Secretary, during the election campaign there were a number of seemingly well-established allegations made about union activities outside of the electoral sphere. I am wondering if your investigation went into such things as "sweetheart" contracts, the use of hospital cards for non-miners? These were several of the subjects that were discussed in the campaign.

MR. SILBERMAN: The answer is no, that wasn't within our charge.

FROM THE FLOOR: Thank you, Mr. Secretary.

(Whereupon, at 5:05 p.m., the Press Conference was concluded.)

INFORMATION ABOUT USDL'S INVESTIGATION OF UMWA DECEMBER ELECTION

NUMBER OF USDL INVESTIGATORS (Clerical not included)

In field	217
In Washington	<u>13</u>
	230 Total professionals

NUMBER ELECTION SITES VISITED

822 locals (of 1,260 voting locals)

NUMBER OF INTERVIEWS (Estim.)

4,400

(These include: local UMWA personnel; volunteer observers; union members; UMWA personnel in 22 Districts and Washington; bank officials; transportation officials, radio, TV, newspaper and advertising persons.)

NUMBER OF MAN-HOURS (Estim.)

More than 43,000

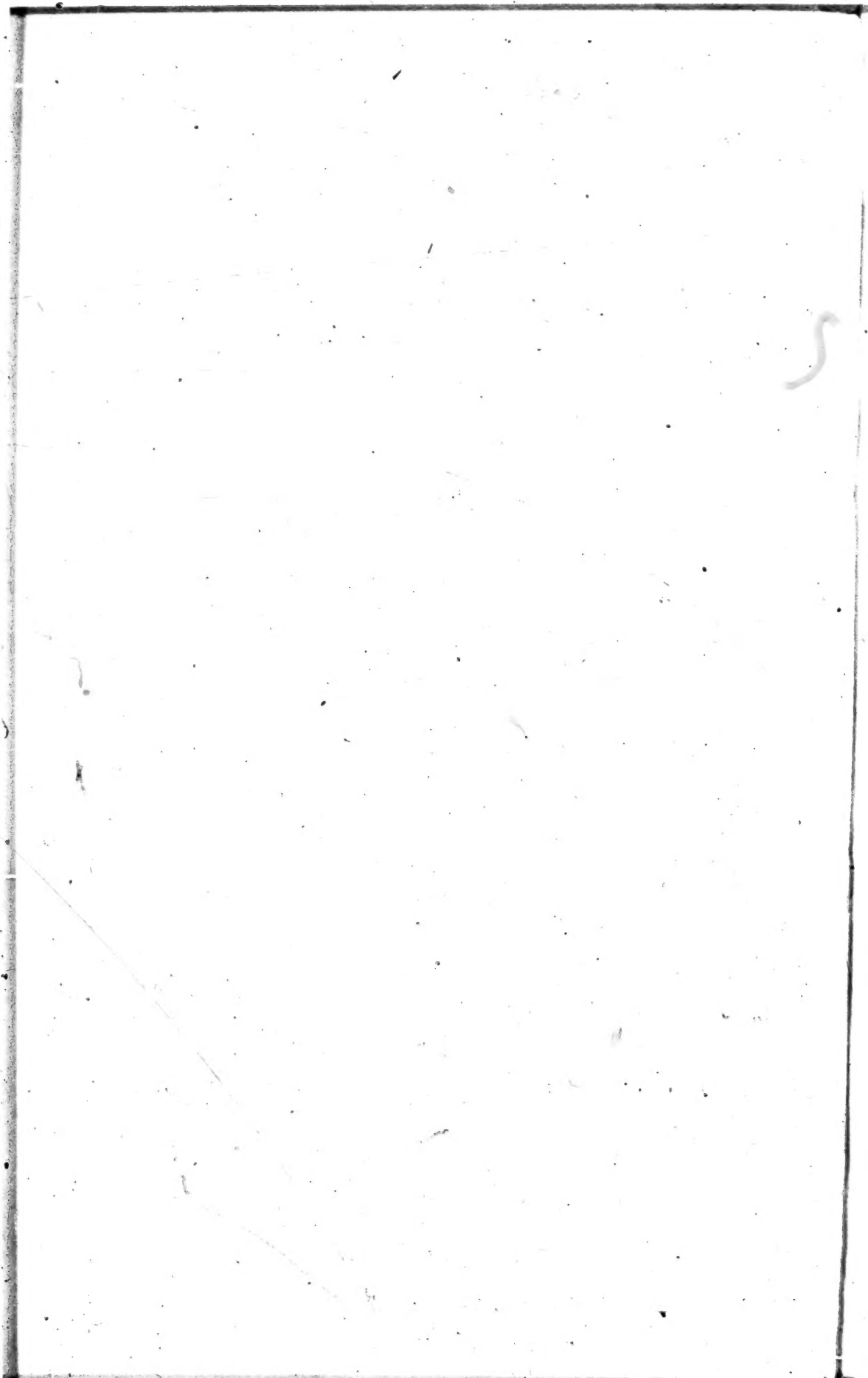
FOR IMMEDIATE RELEASE

January 8, 1970

Following is the statement of Edward L. Carey, General Counsel, United Mine workers of America, at a news conference on January 8, 1970, at 4 p.m., in the International Executive Board Room of the United Mine Workers of America headquarters in Washington, D. C.

The International Union, United Mine Workers of America, has asked Secretary of Labor George P. Shultz to have the United States Department of Labor to conduct a thorough fact-finding investigation of the December 9 election of International officers of the UMWA. It is the desire of the Officers that the Labor Department proceed immediately to determine that the election was conducted fairly and honestly. We have offered to make available to Department investigators any and all material that the Department considers essential to the investigation.

I am also authorized to announce that the International Executive Board of the UMWA has authorized UMWA President W. A. Boyle to offer a reward of \$50,000 for information leading to the arrest and conviction of the person or persons responsible for the killings of Joseph A. Yablonski and his wife and daughter.



JUL 23 1971

E. ROBERT SEAVER, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. **71 - 119**

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent

and

MIKE TRBOVICH (Proposed Intervenor), *Petitioner*

v.

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

JOSEPH L. RAUH, JR.

JOHN SILARD

ELLIOTT C. LICHTMAN

1001 Connecticut Ave., N. W.

Washington, D. C. 20036

JOSEPH A. YABLONSKI

CLARICE R. FELDMAN

1812 N Street, N. W.

Washington, D. C. 20036

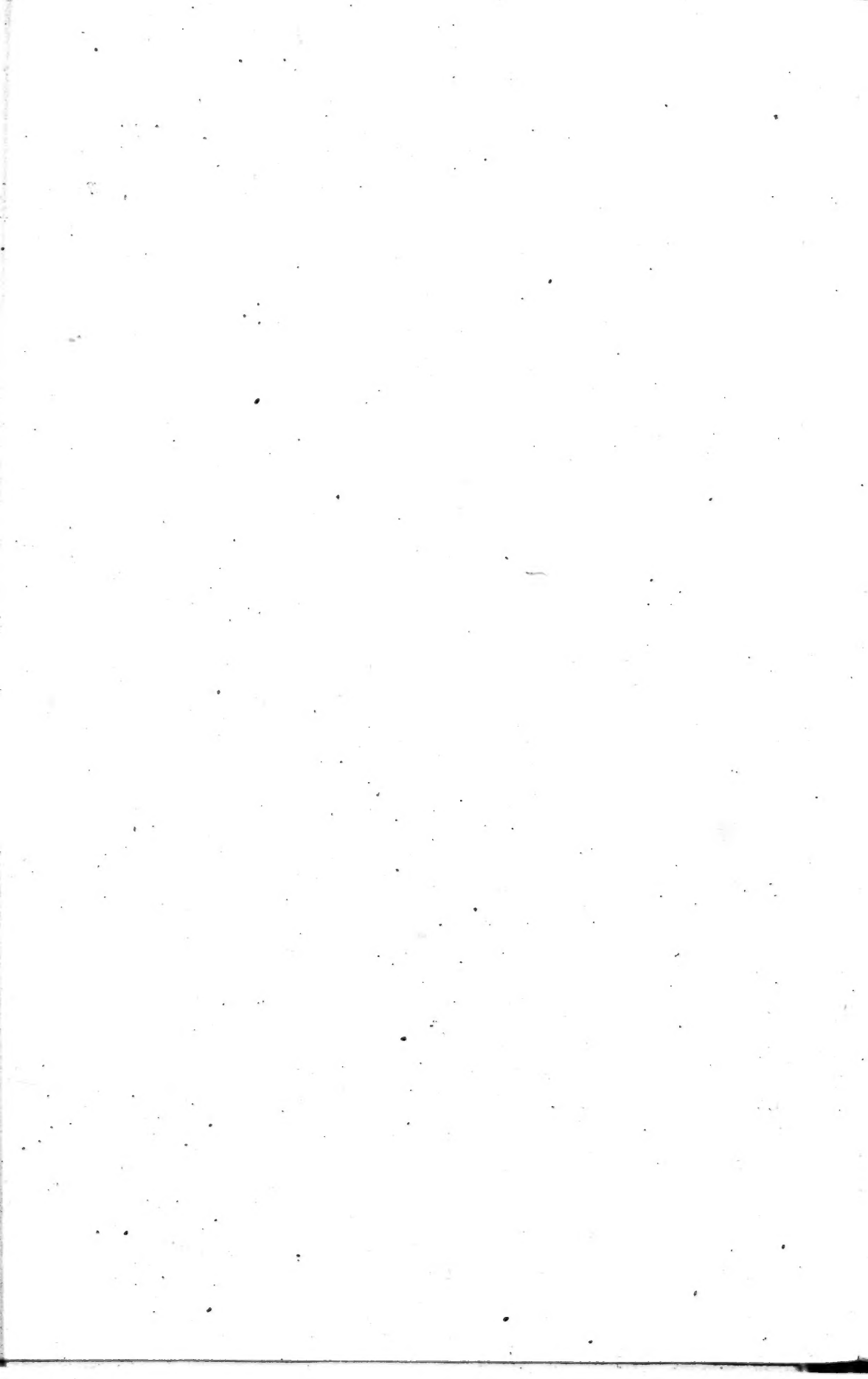
Of Counsel:

CLYDE W. SUMMERS

Wall and High Streets

New Haven, Connecticut





INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
ISSUE PRESENTED	2
STATUTORY SCHEME	7
STATEMENT	7
REASONS WHY CERTIORARI SHOULD BE GRANTED	20
1. The holding that Title IV of LMRDA impliedly bars intervention by a union member, who concededly meets the standards of Rule 24(a), in a suit by the Secretary of Labor to overturn a union election presents a substantial question not heretofore decided by this Court	20
2. Intervention is not precluded by Section 403 of the Act	21
3. Intervention by union members whose interests are not adequately represented by the Secretary is necessary to the protection of their rights under Section 401 of the Act and to realization of the congressional purpose of assuring fair and honest union elections	30
CONCLUSION	37
APPENDIX	1a

AUTHORITIES CITED

CASES:

<i>Blankenship v. Boyle</i> , 77 LRRM 2140 (D. D.C.) ..	11, 12, 13
<i>Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.</i> , 386 U.S. 129	20, 31, 37
<i>Hodgson v. UMWA</i> , 51 F.R.D. 270 (D. D.C.), <i>affd</i> , 77 LRRM 2496	1
<i>Hodgson v. UMWA</i> , 77 LRRM 2332 (D. D.C.)	17
<i>International Union, UAW v. Scofield</i> , 382 U.S. 205	20, 32, 33, 34, 35, 37
<i>NLRB v. Exchange Parts</i> , 375 U.S. 405	14

	Page
<i>Sam Fox Publishing Co. v. United States</i> , 366 U.S. 683	31
<i>Shultz v. United Steelworkers of America</i> , 312 F.Supp. 538 (W.D. Pa.)	35
<i>Stein v. Wirtz</i> , 366 F.2d 188 (C.A. 10), cert. denied, 386 U.S. 996	20
<i>Wirtz v. Local 125, Laborers' Union</i> , 389 U.S. 477	6
 STATUTES:	
<i>Federal Rules of Civil Procedure</i> , Rule 24	2, 7, 17, 18, 20, 21, 26, 28, 30, 31
28 U.S.C. 1254	2
28 U.S.C. 2101	2, 20
<i>National Labor Relations Act</i>	
29 U.S.C. 151, et seq.	
Section 8 (29 U.S.C. 158)	14
Section 10 (29 U.S.C. 160)	32
<i>Labor-Management Reporting and Disclosure Act of</i> 1959,	
29 U.S.C. 401, et seq.	2
Section 3 (29 U.S.C. 402)	15
Section 201 (29 U.S.C. 431)	17
Section 210 (29 U.S.C. 440)	10
Section 301 (29 U.S.C. 461)	15
Section 304 (29 U.S.C. 464)	15, 27
Section 401 (29 U.S.C. 481)	2, 3, 4, 5, 9, 10, 13, 14, 19, 23, 27, 30, 34, 35
Section 402 (29 U.S.C. 482)	5, 6, 9, 21, 23, 25, 26, 28, 33, 34, 35, 36
Section 403 (29 U.S.C. 483)	6, 20, 21, 23, 26, 28
Section 501 (29 U.S.C. 501)	34
Section 504 (29 U.S.C. 504)	4
Section 601 (29 U.S.C. 521)	6, 7, 36

Index Continued

iii

	Page
MISCELLANEOUS:	
104 Cong. Rec. 10947, June 12, 1958	24
104 Cong. Rec. 10999, June 12, 1958	25
Brief for Secretary of Labor in Court of Appeals	31
<i>Department of Labor Legislative History of LMRDA</i>	23, 27
Hart and Wechsler, <i>The Federal Courts and the Federal System</i> (1953)	38
H. Rep. No. 741, 86th Cong., 1st Sess. 1959	25
H. Rep. No. 1147, 86th Cong., 1st Sess. 1959	26
<i>Notes of Advisory Committee on Rules</i> , 1966 revisions	30
<i>Hearings</i> , Senate Labor Subcommittee, 7, 8, 11, 12, 13, 14, 19, 29, 36	
<i>Joint appendix</i> , lodged in Court of Appeals	13
S. Rep. No. 187, 86th Cong., 1st Sess. 1959	25
S. Rep. No. 1684, 85th Cong., 2d Sess. 1958	24
Shapiro, <i>Some Thoughts on Intervention before Courts, Agencies and Arbitrators</i> , 81 Harv. L. Rev. 721 (1968)	22

IN THE
Supreme Court of the United States
OCTOBER TERM, 1971

No.

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent
and
MIKE TRBOVICH (Proposed Intervenor), *Petitioner*
v.
UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

OPINIONS BELOW

The decision of the District Court is published as *Hodgson v. United Mine Workers of America*, 51 F.R.D. 270 (1970), and is appended to this petition. The Court of Appeals affirmed without opinion. Its judgment is published at 77 LRRM 2496 and is appended to this petition.

JURISDICTION

The Court of Appeals affirmed denial of petitioner's motion for leave to intervene by order of April 27, 1971. This petition is timely filed under 28 U.S.C. 2101(c). Jurisdiction is conferred by 28 U.S.C. 1254(1).

ISSUE PRESENTED

Whether a member of a labor organization who concededly satisfies all conditions for intervention of right under Rule 24(a), FRCP, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, *et seq.* (hereinafter "LMRDA"), to set aside a union election.

STATUTORY SCHEME

In 1959, Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 401, *et seq.*, also known as the Landrum-Griffin Act. In enacting this legislation Congress intended, above all else, to assure that labor unions would be governed democratically, that union officers would be selected in fair and honest elections, and that all union members would have a full opportunity to participate in the election process.

The provisions relevant to this case are Title IV of LMRDA, sections 401, *et seq.*, 29 U.S.C. 481, *et seq.*, and Rule 24 of the Federal Rules of Civil Procedure (FRCP). The LMRDA provisions can best be described and appreciated in connection with the particular union election from which this case arises. The December 9, 1969 election of International Officers of the United

Mine Workers of America, one of the bitterest internal union struggles in the history of the country, put these provisions of the LMRDA and their administration by the Department of Labor to their most severe test. As described below, the election was marred by countless violations of the Union's constitution and federal law and ultimately by the murder of candidate Joseph A. ("Jock") Yablonski, his wife and daughter during the month immediately following the election. Despite repeated communications from Yablonski's lawyers detailing hundreds of pre-election violations of LMRDA, the Labor Department declined even to initiate an investigation during the pre-election period. Following petitioner's post-election complaint, the Secretary of Labor brought suit to upset the election. His suit, however, as we show, fails to raise some of the most serious violations and to seek remedial relief which would be effective in preventing repetition of the violations alleged.

During the months following initiation of the present suit, a group of miners organized Miners for Democracy, a reform party within UMWA, seeking fair and honest elections at all levels of the Union and strict enforcement of LMRDA. Petitioner, who was Yablonski's campaign manager, was elected national chairman. For reasons fully stated below, petitioner found it necessary to seek leave to intervene in this proceeding in order to protect his interest in assuring that any rerun election, and all future UMW elections, will be genuinely fair and honest.

The statutory requirements for union election procedures are set forth in Section 401. Section 401(a) requires that a national or international labor organization elect officers at least once every five years. The

election must be by secret ballot among members in good standing or at a convention of delegates chosen by secret ballot. Section 401(c) imposes certain duties on labor organizations and their officers, enforceable at the suit of any bona fide candidate for office: (1) to comply with reasonable requests of any candidate to distribute campaign literature at the candidate's expense to all members; (2) not to discriminate regarding use of membership lists; and (3) if use of union funds is authorized for distribution of campaign literature of any candidate, or of the labor organization itself with reference to such election, to comply with the request of any other bona fide candidate for equal treatment. Further, Section 401(c) guarantees every bona fide candidate the right, once within the 30 days prior to an election, to inspect a list containing the names and last known addresses of all members who are subject to a collective bargaining agreement requiring membership as a condition of employment; such a list must be kept at the principal office of the labor organization. Finally, Section 401(c) provides:

“Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.”

Section 401(e) directs that a “reasonable opportunity shall be given for the nomination of candidates”; that, subject to reasonable qualifications uniformly imposed and subject to the disqualifications of Section 504 (not relevant here), “every member in good standing shall be eligible to be a candidate and to hold office”; and that every member in good standing shall have the “right to vote for or otherwise support the candidate or candidates of his choice, without being subject to

penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." Further, Section 401(e) directs that at least 15 days prior to an election, notice shall be mailed to each member at his last known address and that each member is entitled to one vote.

Section 401(e) also requires that the votes cast by members of each local organization be counted, and the results published separately. Finally, Section 401(e) directs that elections "be conducted in accordance with the constitution and bylaws of [the] organization insofar as they are not inconsistent [with Title IV.]"

Regarding use of union funds, Section 401(g) directs:

"No moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title."

The remedy for violations of Section 401—except as specifically provided by Section 401(c)—is described in Section 402. Under Section 402(a), a member of a labor organization, after exhausting internal remedies, or, after invoking internal remedies without obtaining a final decision within three months after their invocation, may, within one month, complain to the Secretary of Labor, alleging violation of any provisions of Section 401, including violations of the labor organization's constitution or bylaws pertaining to election of officers.

Section 402(b) directs the Secretary to investigate such complaints and, after a quasi-judicial determination by him of probable cause to believe that a violation of Title IV has occurred and not been remedied, to bring a civil action within 60 days of the filing of com-

plaint, against the labor organization in the district court of the United States, in which it maintains its principal office.¹ Section 402(b) directs that such a suit request the district court to set aside the invalid election, if any, and to direct the conduct of a rerun election in accordance with Title IV and such rules and regulations as the Secretary may provide. Finally, Section 402(b) empowers the district court to take such action as it deems proper to preserve the assets of the labor organization.

Section 402(c) directs that if the district court, after trial, finds that the violation of Section 401 "may have affected the outcome of an election", it shall "declare the election . . . to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization."

Section 403 provides as follows:

"No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

¹ It is notable that under § 601(a) of LMRDA, 29 U.S.C. 521(a), the Secretary is empowered to make an investigation whenever "he believes it necessary to determine whether any person has violated or is about to violate any provision of this Act" Presumably, this confers a power to investigate violations of § 401 prior to the holding of an election. See, *Wirtz v. Local 125, Laborers' Union*, 389 U.S. 477, 482 n. 5.

Rule 24(a), FRCP, provides as follows:

"Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

STATEMENT

On December 9, 1969, an election of International Officers was held among the 195,000 members of the United Mine Workers of America. The election was the climax of a bitter contest for the Union's presidency between Joseph A "Jock" Yablonski and W. A. Boyle, the incumbent president. The pre-election period was marred by countless violations of the Union's constitution and federal law.² During the pre-election period,

² Yablonski, through his attorney, periodically filed extensive letters with the Department of Labor detailing these violations, and requesting government intervention. Each time the Secretary declined to initiate any investigation prior to the election, nevertheless conceding his power to make such investigations under Section 601(a) of LMRDA, 29 U.S.C. 521(a). The correspondence is set forth in the record of the Labor Subcommittee's hearings, Hearings, Subcommittee on Labor, UMW Election—1970, pp. 38-106.

With only his own resources to seek protection of rights guaranteed him and other UMWA members, Mr. Yablonski pursued the several suits noted in the text. In view of the Secretary's refusal to initiate any investigation during the pre-election period, it is not surprising that the evidence developed in Yablonski's pre-election suits forms the backbone of the Secretary's complaint in the present proceeding.

Mr. Yablonski was forced to initiate five suits in the District Court for the District of Columbia to secure rights guaranteed him and other UMWA members under LMRDA. The first, *Yablonski v. UMWA* (C.A. 1662-69), sought and obtained an order compelling the union to mail Yablonski campaign literature to members. The second, *Yablonski v. UMWA* (C.A. 1799-69), sought and obtained an order requiring reinstatement of Mr. Yablonski to the position of Acting Director of Labor's Non-Partisan League, the lobbying arm of the UMWA, from which he had been fired a week after declaring his candidacy; the District Court found that Yablonski's firing was a political reprisal and ordered his reinstatement. The third, *Yablonski v. UMWA* (C.A. 2413-69), sought and obtained an order restraining the union from continuing to use its official organ, the *UMWA Journal*, as a campaign instrument for its incumbent officers. The fourth, *Yablonski v. UMWA* (C.A. 3061-69), sought to establish rules and safeguards for a fair election in connection with the December 9 balloting; the District Court denied preliminary injunctive relief on the basis of representations of counsel for the UMWA that certain of the election procedures sought by the Yablonski forces would be effected.³

The election was held as scheduled, and the incumbents declared themselves re-elected by a vote of 80,577

³ The fifth suit, *Yablonski v. UMWA* (C.A. 3436-69), still awaiting trial, seeks an accounting and restitution from the UMWA's officers for funds misappropriated and misused, including funds used to insure the reelection of UMWA's officers during the 1969 campaign. (Notable in connection with this suit is the statement of Senator Harrison A. Williams, Chairman of the Subcommittee on Labor, which has investigated the 1969 UMW election; "Our investigation uncovered evidence of a pattern and practice of campaign financing which suggests that the quarter-million dollar campaign was financed directly and through indirect channels out of the UMWA Treasury in violation of the criminal provisions of the LMRDA." Hearings, Subcommittee on Labor, United Mine Workers—1971, July 12, 1971.)

to 46,073.^{3a} On December 18, 1969, Yablonski filed election challenges with the UMWA's International Executive Board, and served copies on the Labor Department. The bodies of Mr. Yablonski and his wife and his daughter were discovered in their home in Clarksville, Pennsylvania, on January 5, 1970.

On January 20, 1970, Mike Trbovich, campaign manager for Yablonski, filed a formal complaint with the Labor Department, incorporating Mr. Yablonski's challenge of December 18, 1969, and requesting that the election be set aside.⁴

On March 5, 1970, the Secretary filed this proceeding, based on petitioner's complaint in the District Court for the District of Columbia. The first cause of action, brought pursuant to Section 402(b) of LMRDA, sought to have the election set aside on grounds of alleged violations of the UMWA constitution and LMRDA. As alleged by the Secretary, the union and the incumbent officers violated Section 401 of LMRDA by (1) failing to provide secret balloting in that many members were required or permitted to vote in such a manner that their choices could be identified, Section 401(a); (2) failing to provide adequate safeguards to insure a fair election, including permitting campaigning at the polls, Section 401(c); (3) denying candidates the right to have observers at polling places and present where ballots were counted, Section 401(c); (4) violat-

^{3a} Notably, where Mr. Yablonski was able to place observers at the polls, he "generally defeated Boyle or broke even with him"; where Yablonski couldn't place poll watchers, Boyle "announced victories of almost 50 to 1 proportions." Hearings, Subcommittee on Labor, UMW Election—1970, p. 78.

⁴ Petitioner's complaint was filed consistent with the statutory requirement of exhaustion of internal union remedies, Section 402(a) of the Act, the Union having waived exhaustion of these remedies after the murder of Yablonski, at the insistence of the Labor Department.

ing its own constitution in that many locals failed to elect tellers and to hold membership meetings to set the time and place for elections, Section 401(e); (5) denying its members the right to vote for candidates of their choice without being subject to penalty or reprisal, Section 401(e); (6) denying certain members the right to vote by failing to conduct elections in some locals, Section 401(e); and (7) using union funds, the union's official publication and other offices and properties, to promote the candidacies of incumbent officers, Section 401(g).

The second cause of action, under Section 210 of LMRDA, 29 U.S.C. 440, sought to require the union to maintain adequate financial books and records. (A preliminary injunction has been entered under the second cause of action, *infra*, p. 17.)

All of these allegations were brought to the Department's attention by the communications of the Yablonski forces before and after the election. The information provided by these communications, the evidence presented in the pre-election suits and the findings and judgments in these cases noted above, form the backbone of the Secretary's suit. The Secretary's complaint, however, failed to present in the first cause of action two crucial issues, also raised by the Yablonski forces, relating to manipulation by the union and its incumbent officers of the votes of non-working members receiving pensions from the U.M.W.A. Welfare and Retirement Fund. Because the UMW insists that retired members maintain union membership as a condition of pension eligibility, there is a substantial block of captive pensioned members.⁵ In fact, the

⁵ Based on an unfair labor practice charge filed by petitioner, the National Labor Relations Board has filed a complaint seeking to require the UMWA to cease and desist from the practice of in-

approximately 70,000 bituminous pensioners comprise over one-third of the UMW membership. The impact of these votes on the outcome was underscored by findings of the staff of the Senate Subcommittee on Labor in its investigation of the election. While it would not be possible to segregate votes of all of the bituminous pensioners—since most belonged to locals with at least some working members—the Subcommittee staff did analyze the votes of the 292 locals in the bituminous areas of the U.S., composed solely of pensioners. Of the 8,169 votes cast by these locals, over 93% were for Boyle. As the Subcommittee staff reasoned, if this figure is projected to all of the 70,000 potential bituminous pensioner votes, the impact on the election—with a margin of less than 35,000 votes—would appear obvious. Hearings, Subcommittee on Labor, UMW Election—1970, p. 291.

The overwhelming vote of the bituminous pensioners in favor of the Boyle slate is attributable largely to two factors: (1) a substantial increase in pension payments, and (2) perpetuation of local unions comprised solely, or almost solely, of non-working members, in violation of the UMWA constitution.

sisting that retired members maintain membership in good standing as a condition of pension eligibility. This matter is now pending before the Board.

The findings of the District Court in *Blankenship v. Boyle*, 77 LRRM 2140, 2153 (D. D.C. 1971), a derivative class action involving mismanagement of the pension fund, on this point, are notable. The District Court found that the "trustees sponsored [a pension] application form which incorrectly implies that Union membership . . . is necessary before an application will be processed. . . . There is ample documentary and testimonial evidence that applicants were improperly led by this form to believe that Union membership was a prerequisite for eligibility, and were often forced to make substantial payments, sometimes running into hundreds of dollars, as 'back dues' to reinstate their Union membership."

The pension increase: On June 23, 1969, Boyle was designated union trustee of the bituminous pension fund, succeeding John L. Lewis who died earlier in the month.⁶ The very next day—in the midst of the election campaign—pension payments were increased from \$115 to \$150 per month. The cost of the increase is about \$30 million annually. Findings of the District Court in *Blankenship v. Boyle*, 77 LRRM 2140, 2156-57, and testimony before the Senate Subcommittee on Labor, Hearings, Senate Labor Subcommittee, United Mine Workers Election-1970, indicate that the June 24 pension increase was a politically motivated action, hastily secured by Boyle himself, without proper consultation with the other trustees of the Fund, and without consideration of its effects on the Fund's solvency.⁷

⁶ The other two trustees of the Fund at that time were George L. Judy, who had been designated operators' trustee on June 4, 1969, and Miss Josephine Roche, who had been neutral trustee for many years.

⁷ *Blankenship* is a derivative class action, brought on behalf of persons entitled to benefits from the UMWA Welfare and Retirement (Bituminous) Fund, against the Fund, certain present and former trustees, the UMWA, and the National Bank of Washington (74% of whose stock is owned by the UMWA.) The suit alleged that the defendant trustees had breached fiduciary duties to Fund beneficiaries by, among other things, maintaining large balances—ranging from \$30 to \$75 million—in non-interest bearing checking accounts in the defendant Bank, and that the other defendants had conspired in the trustees' breach. The District Court determined on April 28, 1971 that the alleged breaches and conspiracy had occurred, enjoined continuation of such practices, and directed the ouster of Boyle and Miss Roche as trustees. Computation of damages is pending hearing in the District Court.

Relevant here is the conclusion of the District Court in *Blankenship* that in securing the June 24 pension increase, Boyle breached his fiduciary duty to Fund beneficiaries. The District Court found that Miss Roche, who was hospitalized at the time the increase was secured, and later voiced sharp criticism of it, "was not consulted

The political motivation for the increase is underscored by the form of the "Notice to Trust Fund Pensioners" of June 27, 1969, announcing the action. While notices of previous increases were simply signed "U.M.W.A. Welfare and Retirement Fund", the notice of this increase was signed "W. A. Boyle—Chairman, Board of Trustees." Samples of several increase notices are reproduced in the Labor Subcommittee hearings, Hearings, Subcommittee on Labor, UMW Election—1970, pp. 191-192.

An actuarial study of the Fund, made by the U.S. General Accounting Office at the request of the Labor Subcommittee, indicates that the increase was fiscally suicidal. The study recites:

"Based on projections prepared for this study, the United Mine Workers Welfare and Retirement Fund will become insolvent during the fiscal year ended June 30, 1975, if pensions continue at the rate of \$150 per month and no increase is made in contribution rates to the Fund."

or even advised of the action in advance", and that the operators' trustee, Judy, agreed to vote for the increase, partly because Boyle "falsely led [him] to believe" that he had Roehie's proxy for the increase in his pocket. Further the District Court found that the increase was implemented without "detailed projections of the Fund's long-term ability to pay"; that the "increase was handled . . . with little recognition of its fiscal and fiduciary aspects"; and that the timing and hasty implementation of the increase were motivated by "election considerations." 77 LRRM at 2156-57.

Likewise relevant are the findings and conclusions of Senator Williams, Chairman of the Labor Subcommittee, made after lengthy testimony regarding the pension increase. Senator Williams found that the increase served "obvious political purposes" and was "one of the most decisive factors in the UMW election." He concluded that the increase "represented a substantial and improper interference with the electoral process within the meaning of the statute (Sec. 401(e))." (Joint Appendix, lodged in Court of Appeals, p. 49.)

Further, the study indicates that if pensions had been maintained at \$115 per month, Fund assets would not have begun to decline until the mid 1970's. (Hearings, Senate Labor Subcommittee, UMW Welfare and Retirement Fund—1970, p. 217.)

In testimony before the Labor Subcommittee, former Secretary of Labor Shultz took the position that, regardless of the fiscal unsoundness of the increase, the impropriety of Boyle's conduct, the political motivation of the increase, or its effect on the outcome of the election, the pension increase would not be "improper interference" in the sense of § 401. Hearings, Senate Labor Subcommittee, UMW Election—1970, pp. 344-45. (Compare, *NLRB v. Exchange Parts*, 375 U.S. 405, construing parallel language in the National Labor Relations Act, 29 USC 158(a).) Thus, the Secretary's complaint failed to raise the pension increase issue or to seek remedial relief which would dissipate the political effect of the June 24 pension increase in the context of a rerun election.

Improperly constituted locals: The UMW constitution requires that local unions with less than 10 working members be abolished, and their members transferred to properly constituted locals. Nevertheless, the UMW allowed approximately 500 of its 1200 locals to remain in existence at the time of the 1969 election and thereafter despite the fact that they were not properly constituted. The perpetuation of the "bogus" locals and the voting of pensioners through such locals carry grave potential for electoral abuse, which the Secretary of Labor has failed to recognize. First, under Labor Department ruling, local unions with *no* working members—and more than half of the "bogus" locals have *no* working members—are excluded from

the LMRDA definition of "labor organization", sec. 3(i) of the Act, 29 USC 402(i), and hence, are exempt from the reporting and disclosure requirements of Title II. In this connection, it must be recognized that 19 of the 23 UMWA districts are under trusteeship, so that their officials are appointed by the International union rather than elected,⁸ and that most of the "bogus" locals which are exempt from the requirement of Title II are in Districts which are under International trusteeship. Appointed district officials control these exempt locals, and have untrammelled opportunities to expend their funds without accounting for them. Further by allowing the 500 "bogus" locals to remain in existence, the incumbents have added immeasurably to the burden of any opposition slate. In order to police conduct of any International election, an opposition party must, by virtue of these illegal locals, strain in vain to locate the sites of the polling places of these locals, must double their observer and poll worker forces, and must face insurmountable problems of communicating with more than one-third of the UMWA's membership. Worst of all, pensioners are often threatened with reprisals—particularly loss of pensions—in connection with voting, and in many instances denied their right to vote at all. In the context of the bogus locals—insulated from effective poll

⁸ The Department of Labor brought a suit in December 1964 under Title III of LMRDA, Sections 301 *et seq.*, 29 U.S.C. 461 *et seq.*, to restore autonomy in seven of the districts under trusteeship. Under Section 304(c), 29 U.S.C. 464(c), trusteeships are presumed invalid after having been in existence for 18 months. Some of these trusteeships date back several decades, and the presumption of invalidity clearly applies to all of them. Almost inexplicably, the Department of Labor has acquiesced in an interminable series of requests by the UMWA for delays in bringing the suit to trial. The suit finally came to trial July 15, 1971.

watching and without the presence of any significant number of working members—the amenability of pensioners to undue influence by the UMWA and agents of its incumbent officers is at a maximum. These pensioners were easy prey for the Boyle men that “ran” the elections in the bogus locals. If these locals are allowed to be maintained during the course of a rerun election, the same abuses are certain to be repeated. To condemn the abuses without seeking remedial relief that gets at their causes is simply to encourage protracted litigation on this point and to make any rerun a mockery. Nevertheless, the Secretary’s complaint fails to raise this issue, just as it failed to raise the politically-motivated pension increase.

The Secretary’s complaint was also noticeably weak with respect to the second cause of action. The affidavits filed by the Department of Labor investigators demonstrate that for the three-year period, 1967-1969, expenditures of more than \$10 million in funds of the International Union had not been accounted for.⁹ Despite such massive irregularities, the Secretary sought only to require the International Union to maintain adequate books and records in the future. The Secretary did not seek establishment of a monitorship to assure preservation of union assets in the course of a rerun election.

The inadequacy of the relief sought by the Secretary under the second cause of action is particularly apparent, in view of the breadth of the findings of fact entered by the District Court incident to the granting

⁹ In addition, these affidavits indicate that during the same period more than \$1,800,000 of expenditures by UMWA Districts were not documented. Nevertheless, the Secretary’s complaint sought no relief whatsoever as to the Districts.

of the limited preliminary injunctive relief sought by the Secretary. (*Hodgson v. United Mine Workers of America*, 77 LRRM 2332 (D. D.C. 1971). While the Secretary sought—and the District Court consequently granted—only injunctive relief for the future, the District Court found that during the years 1967, 1968, and 1969, the UMW failed to keep and maintain adequate records regarding expense account disbursements, disbursements for organizing, mine safety work, lobbying, etc., and transferred substantial amounts of money in the form of loans or advances to various of its districts without keeping records of amounts advanced, or amounts repaid, if any.

On April 1, 1970, a group of coal miners organized the Miners for Democracy, a reform party within the UMW, aiming to assure democratic elections at all levels of the union, and to restore sound management of the union's assets. Petitioner was elected National Chairman of the group.

On October 2, 1970—when the Department's suit and motion for a preliminary injunction had made no visible progress more than six months after suit was initiated—petitioner moved, on behalf of himself and Miners for Democracy under Rule 24(a), for leave to intervene as of right or, in the alternative, for permission to intervene under Rule 24(b). Petitioner proposed additional allegations relating to the political manipulation of the pension fund, perpetuation of the "bogus" locals, and the union's failure to provide and make available to its members adequate information about, and records of, its finances, as required by Section 201 of LMRDA. Further, petitioner proposed to add four specific claims for relief requiring (1) disbanding of the bogus locals; (2) installation of a Board

of Monitors to oversee UMWA financial affairs; (3) publication of a finding that the incumbent president breached his fiduciary duty to all members by manipulating the Fund for political benefit, so as to dissipate the effect of the pension increase on the pensioned voters: and (4) establishment of rules for conduct of a rerun election, or appointment of a panel, to be paid out of UMW funds, to establish and enforce fair rules for a rerun election.

The District Court did not in any way deny that petitioner satisfied the conditions for intervention of right. Rather it made the inference—a patent *non sequitur*, as we shall show—that since Congress accorded the Secretary sole authority to *initiate* suit, it also meant to preclude intervention. For the same reason the District Court denied permissive intervention.

The Court of Appeals affirmed summarily. Its judgment cited “substantial agreement” with the District Court’s opinion.¹⁰

It is significant that the Secretary conceded in oral argument in the Court of Appeals that petitioner fully satisfies the conditions for intervention of right under Rule 24(a). Given this concession, it is unnecessary to labor the point that petitioner has substantial interests which will be practically affected by this proceeding and which are not adequately represented by the Secre-

¹⁰ The brevity of the Court of Appeals’ opinion should not be taken as reflecting a view that the question posed is insubstantial. Rather, the Court of Appeals was working under extreme time pressure, since at that time this case was scheduled to come to trial in May 1971. Thus oral argument was had April 22—only days after submission of the Secretary’s brief and petitioner’s reply brief—and the Court of Appeals announced its decision on April 27.

tary. Suffice it to say that petitioner and those he represents have strong interests in assuring that all violations of Section 401—those alleged by the Secretary as well as those touching manipulation of the pensioner votes—be presented forcefully and effectively. Assuming that there is to be a rerun election, petitioner and the persons he represents have urgent interests in securing relief particularly, establishment of guidelines that will genuinely assure a fair, honest election, and preservation of union assets in the meantime.¹¹

¹¹After repeated delays, trial of the Secretary's suit is now scheduled to begin September 13, 1971. Even if the suit actually does come to trial before disposition of this petition, petitioner's interest in having a voice in the formulation of guidelines for a rerun election will hardly be mooted, or rendered less urgent. Further, a pattern of illegality is apparent in connection with UMW elections. Serious questions have arisen in connection with the December 1970 election of officers in UMW District 5, one of the four UMW districts not under trusteeship. That election is now under investigation by the Department of Labor. Recent testimony before the Senate Labor Subcommittee regarding the District 5 election detailed violations of LMRDA, including misappropriation of District 5 funds to support the campaigns of the incumbents, violation of members' rights to vote without interference, and a failure to count ballots from three large locals within the District which went overwhelmingly against the incumbents. Hearings, Subcommittee on Labor, UMW Election, July 12-13, 1971. The December 1970 District 5 election was a repeat performance of the 1969 International election. Further, present use of the *UMW Journal* by the incumbent International officers to propagandize for their future campaigns is already casting doubt on whether a fair election can be held in the future, whether under the Secretary's supervision or not.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. The Holding That Title IV of LMRDA Impliedly Bars Intervention by a Union Member, Who Concededly Meets the Standards of Rule 24(a), in a Suit by the Secretary of Labor To Overturn a Union Election Presents a Substantial Question Not Heretofore Decided by This Court.

The Court of Appeals held that intervention in the Secretary's suit is precluded by Section 403 of the Act, 29 U.S.C. 483, which states:

"The remedy provided by this title for challenging an election already conducted shall be exclusive."

The Court of Appeals decided the question summarily and in a manner inconsistent with this Court's decisions in *International Union, UAW v. Scofield*, 382 U.S. 205, and *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129, and with Rule 24, FRCP.

The only other court of appeals decision on this question is *Stein v. Wirtz*, 366 F.2d 188 (C.A. 10), *cert. denied*, 386 U.S. 996. The Tenth Circuit also held intervention precluded by Section 403. It is notable that the petition for certiorari in *Stein*, no. 1257, OT 1966, was submitted *pro se* and was untimely filed under statutory limits on this Court's jurisdiction, 28 U.S.C. 2101(c). It is also notable that *Stein* arose prior to the 1966 amendments liberalizing Rule 24(a), and also that the *pro se* petition failed to adduce the bearing of *Scofield* on the question presented. Further, it is notable that the sole reason given by the Secretary in his opposition to the petition in *Stein* was its untimeliness. Thus, it is evident that the substantiality of the question presented here has not been effectively argued by way of any prior petition for this Court's review.

2. Intervention Is Not Precluded by Section 403 of the Act

Given the Secretary's concession that petitioner fully satisfies all conditions for intervention of right under Rule 24(a), and given the liberal purpose of the 1966 revision of the rule, the Secretary has a heavy burden of demonstrating either clear language in LMRDA or clear indication in the legislative history in support of his position that LMRDA precludes intervention. We maintain that he has done neither.

By providing that the remedy described in Section 402 of the Act, 29 U.S.C. 482, is "exclusive", Section 403 makes clear that the Secretary has the sole authority to *initiate* suits to upset union elections. Section 403 does not specifically provide that the Secretary shall be the sole party-plaintiff, or that other persons interested in the proceeding may not intervene.

Generally, intervention in proceedings in federal district courts is governed by Rule 24, FRCP. Under Rule 24(a)(2), a person is entitled to intervene as a matter of right when he "claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

We submit that there is nothing in the language or in the legislative history of the LMRDA calling for an exception to Rule 24's application.

The lower courts' decision to the contrary rests on a reading of Section 403 of the Act which confuses the right to *initiate* suit with the right to *intervene* in litigation already under way. The rights to initiate

suit and to intervene are distinct and are not co-extensive. The fundamentality of the distinction between them has been stressed by Professor David Shapiro.

“Perhaps it should go without saying, but it must be understood that there is a difference between the question whether one is a proper plaintiff or defendant in an initial action and the question whether one is entitled to intervene. Thus, to decide whether a particular action may be brought by this plaintiff against this defendant may require a determination of whether the controversy is ripe for adjudication, whether the parties before the court are real parties in interest, and whether the interests asserted are sufficient to mobilize the judicial machinery. When one seeks to intervene in an ongoing lawsuit, these basic questions have presumably been resolved; the disposition of the request, then, should focus on whether the prospective intervenor has a sufficient stake in the outcome to contribute to the resolution of the controversy to justify his inclusion.” Shapiro, *Some Thoughts on Intervention before Courts, Agencies and Arbitrators*, 81 Harv. L. Rev. 721, 726 (1967).

Professor Shapiro's comments regarding Title IV of LMRDA highlight the Court of Appeals' confusion of initiation and intervention in this case.

“Under Title IV of the Landrum-Griffin Act, only the Secretary of Labor can initiate an action to set aside a union election, but it need not follow that the complainant who starts the machinery of the Secretary in motion may never intervene to protect his interest once a case is filed. That determination may well turn on a number of factors quite separate from his standing to sue, including the nature of his interest and the adequacy of the protection afforded that interest by existing parties.” (Id., at 727.)

Nor does the legislative history support the Court of Appeals' reading of the Act.

The legislative history reveals that Congress' intent in enacting Sections 402 and 403 was to provide the strongest possible judicial enforcement of rights protected by Section 401, at the same time avoiding piecemeal litigation and excessive disruption of union affairs. Piecemeal litigation is avoided under this scheme by the direction in Section 403 that the remedy provided in Section 402 shall be exclusive. Excessive disruption of union affairs is avoided by the requirements of Section 402 preconditioning initiation of suit on (1) pursuit by the complaining union member of internal union remedies, and (2) the Secretary's determination of probable cause to believe that violations of Section 401 occurred, and may have affected the outcome of the election.

When viewed in light of these objectives, it is apparent that Congress' choice of a scheme of judicial enforcement vesting initiation of suits in the Secretary suggests no intent to preclude intervention.

Sections 402 and 403, as ultimately enacted in 1959, had their origin in a bill introduced by Senator Kennedy in 1958 (S. 3751, introduced May 5, 1958); *Department of Labor Legislative History of the Labor-Management Reporting and Disclosure Act*, p. 700. This was incorporated in S. 3974 which was passed by the Senate in 1958. *Legislative History, supra*, p. 760. The wording of the sections, as introduced by Senator Kennedy and passed by the Senate in 1958, was, in all relevant respects, identical with the sections as finally enacted in 1959:

When the report of the Senate Committee on Labor and Public Welfare on S. 3974, S. Rep. No. 1684, 85th Cong., 2d Sess. 1958, was submitted, Senator Kennedy explained why authority to bring suit was vested in the Secretary. His explanation stressed that suits by the Secretary would provide stronger enforcement of members' rights to fair and honest elections than suits by members, since the latter frequently would lack adequate resources to bear the burden of litigation by themselves. He spoke in these terms:

"In the bill we provide the right to appeal to the Secretary of Labor whenever a member believes that his rights, as provided in the case of an election have been denied him. Then the Secretary of Labor in effect becomes the union member's lawyer. Such a provision is infinitely stronger than any provision now in effect." 104 Cong. Rec. 10947, June 12, 1958.

Senator Kennedy affirmed that the authority to sue was given to the Secretary, "in order that the Secretary of Labor can look after a *member's interests*." (Emphasis supplied). Later the same day, Senator Kennedy underscored the role of the Secretary as aiding union members in enforcing their rights:

"The bill adds to and does not detract from the members' rights. In addition, under the bill they will have the right to invoke the aid of the Secretary of Labor and the Federal Courts to relieve their loads of oppressive trusteeships maintained by national and international unions for improper and undemocratic purposes. They will also have the right to invoke the aid of the Secretary in assuring that their constitutional officers are elected democratically by secret ballot, that members are not improperly denied the right to vote, and that

elections are properly conducted." 104 Cong. Rec. 10999, June 12, 1958. (Emphasis supplied).

The original understanding of Section 402 was quite clear. Senator Kennedy, on the floor of the Senate, made as explicit as words possibly can that the rights being protected were the union members' rights, and that the role of the Secretary was to aid them in enforcing those rights because in election disputes the costs of litigation were too heavy for union members to bear.

These explanations of Senator Kennedy settled the issue in the Senate. The next year the provision was reincorporated in S. 1555, the new bill reported out by the committee, S. Rep. No. 187, 86th Cong., 1st Sess. 1959, and passed by the Senate without any comment.

Two major alternatives to this scheme were before the Congress. First, the bill adopted by the House of Representatives would have authorized union members—rather than the Secretary—to initiate suit, after exhausting internal union remedies, to set aside union elections.¹² Second, a bill before the Senate, supported by Senator Goldwater and the administration, S. 748, 86th Cong., 1st Sess. (1959), authorized the Secretary to initiate election challenge suits, but also provided that union members, without exhausting internal remedies, could bring suit in any court of competent jurisdiction, raising claims not raised by the Secretary.

¹² The bill reported out by the House Committee on Education and Labor, H.R. 8342, provided for suit by members, rather than by the Secretary. No explanation for this was given in the Committee report, H. Rep. No. 741, 86th Cong. 1st Sess. 1959, nor in House floor debates. Provision for initiation of suit by union members was copied without comment in the Landrum-Griffin substitute bill, H.R. 8400, which passed the House.

No intent to preclude intervention can be inferred from the fact that the Senate chose the Kennedy bill, and not the Goldwater-Administration bill, if for no other reason than that the Senate never even voted on this alternative. By allowing union members to initiate suit in any court of competent jurisdiction, whether state or federal, the Goldwater bill would have spawned piecemeal litigation, which the language of Section 403 of the Act shows Congress was seeking to avoid. Further, by allowing union members to initiate suit without exhausting internal remedies, and without any determination by the Secretary that the election had probably been affected by violations of the Act, the Goldwater bill would have caused substantial disruption of union affairs; the language of Section 402(a) and (b) makes unmistakably clear that Congress sought to limit such disruption. At any rate, the Goldwater bill had no relevance to the question of intervention; hence, non-adoption of the Goldwater bill may not logically be taken as evincing any intent to preclude intervention. On the contrary, the Goldwater bill's provision for initiation of suits by members, separate from the Secretary's suit, may have been thought unnecessary in view of the presumed availability of intervention under Rule 24, FRCP. (See note 13, *infra*, p. 27)

Similarly, no intent to preclude intervention may be found in the Conference Committee's choice of the Kennedy bill—authorizing the Secretary to initiate suits—over the House bill, which authorized initiation of suits solely by members. First, the Conference Committee's report offers no explanation for this choice, H. Rep. No. 1147, 86th Cong. 1st Sess. 1959. To the extent that reasons can be inferred, it appears

that the Conference Committee's preference for the Senate version stemmed from the same considerations enunciated by Senator Kennedy. Some light on the Conference Committee's decision is shed by statements of Senator Goldwater, a member of the Committee, to the Senate, while the work of the Conference Committee was under way:

"... the approach of the Senate bill is substantially preferable in its reliance on Government, rather than *exclusively* individual, enforcement action. Since the election standards are designed to insure honest elections for the benefit of all union members as a matter of public policy, their violation is a matter of public rather than *exclusively* individual concern and should be enforceable in the same way as the trusteeship standards in the bill..."¹³ (Cong. Rec. 16489, Senate, August 20, 1959, *Legislative History, supra*, 830.) (Emphasis supplied.)

Rejection of the House bill, then, signifies that Congress decided that as a matter of public policy, *exclusive* reliance on union members for initiation and conduct of litigation challenging union elections would not adequately enforce rights protected by Section 401. Rather than downgrading the interests of individual members in assuring fair and honest elec-

¹³ It is notable that trusteeships can be voided by action of either the Secretary or the individual union members under Section 304 of the Act, 29 U.S.C. 464. Thus, at least in Senator Goldwater's view, the Conference Committee's rejection of the House's reliance on "exclusively individual enforcement action" left individuals with an enforcement role analogous to that under the trusteeship provisions. Since the Senate had granted sole authority to *initiate* suit to the Secretary, thereby passing over the Goldwater-Administration bill, Senator Goldwater evidently contemplated that individuals could, under the Senate bill, perform this enforcement role by way of intervention.

tions, this determination accorded greater recognition to those interests by lending the prestige and resources of the Secretary to their enforcement. Surely the legislative desire to avoid piecemeal litigation—as expressed in Section 403, vesting sole authority to *initiate* suit in the Secretary—serves to assure effective and efficient enforcement of Title IV and is consistent with the policy underlying the Conference Committee's decision. Also the legislative aim of avoiding undue disruption of internal union affairs, served by preconditioning suit on pursuit of internal remedies and determination of probable cause, is consistent with the policy of enhancing enforcement of rights protected by Title IV. In contrast, a legislative intent to preclude intervention, and thereby deny individual members any access whatsoever to the judicial machinery for challenging elections, would be totally inconsistent with the clear indications that it was *their* rights which Congress was seeking to protect by enacting Title IV, and, specifically, by involving the Secretary in the enforcement process.

In sum, the only clear legislative history with respect to union members' participation in Title IV suits brought by the Secretary is to be gleaned from the 1958 debate and not from the various proposals which were rejected in 1959 in favor of the exact provisions which passed the Senate in 1958. The suggestion that the right of intervention, which otherwise would have been available to an interested union member under Rule 24, would be denied to him under Section 402, is simply at odds with Senator Kennedy's explicit announcement that the identical provisions in the 1958 bill "adds to and does not detract from the members' rights."

Even if the legislative history could somehow be deemed to leave room for doubt, surely doubts should be resolved in favor of the individual members whom Congress sought to protect and not in favor of entrenched union leadership. Strong support for this view was expressed in recent testimony of Senator Robert P. Griffin before the Senate Labor Subcommittee in a hearing focusing on the Department of Labor's administration of LMRDA, and whether it has lived up to the intent of the legislating Congress. As one of the principal sponsors of LMRDA, with which his name is popularly connected, Senator Griffin speaks with authority regarding the intent of Congress in enacting this legislation. As a general matter, Senator Griffin stated,

"... I am compelled to say that ... over the past 12 years under four Administrations, the Labor Department has generally been timid and reluctant to give Landrum-Griffin the vigorous implementation and strict enforcement Congress expected."

With respect to the question posed here, Senator Griffin had the following to say,

Even though Congress gave exclusive authority to the Secretary of Labor to *initiate* such suits, I am aware of no clear requirement that complaining parties must be excluded once legal proceedings have been initiated. Once again it seems to me, doubts have been resolved against the worker and in favor of the entrenched union hierarchy."

Hearings, Subcommittee on Labor, UMW Election—
July 13, 1971. Prepared statement of Senator Griffin.

3. Intervention by Union Members Whose Interests Are Not Adequately Represented by the Secretary Is Necessary to the Protection of Their Rights Under Section 401 of the Act and To Realization of the Congressional Purpose of Assuring Fair and Honest Union Elections.

Rule 24 represents the considered judgment of the Advisory Committee on Rules as to when intervention is appropriate. The judgment necessarily represents a balancing of the interest of proposed intervenors with the interests of the original parties in controlling the course of the litigation and avoiding proliferation of parties and issues. Rule 24(a) does not accord an unqualified right of intervention to all persons in all circumstances. Only those who genuinely claim an interest in the proceeding which is not shown to be adequately represented by existing parties are entitled to intervene as a matter of right.

Further, the Notes of the Advisory Committee on Rules regarding the 1966 revision of Rule 24 indicate, "An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." As has been indicated, petitioner is seeking to do two things by way of intervention: first, to raise certain issues not raised by the Department, and, second, to assure that those violations which the Secretary has alleged will be vigorously presented and their recurrence effectively prevented. Certainly the Secretary—like any other party to any other suit—may adduce legitimate interests in avoiding proliferation of parties and issues and in controlling the course of litigation. To the extent that these interests are legitimate, however, they are adequately protected by Rule 24 itself. A total ban on intervention, as advocated by the Sec-

retary, would be a disservice to the rights of union members which LMRDA commands the Secretary to protect. Given the balancing inherent in Rule 24, such an extreme position is totally unnecessary to protect any legitimate interest of the Secretary.

The appropriateness of intervention of right in this case is especially clear in view of the 1966 revision of Rule 24(a) removing restrictions which had encumbered intervention under the former Rule.¹⁴ This Court in *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129 declared that under the revised Rule 24(a), "some elasticity was injected", 386 U.S. at 134, and expanded the right of competitors and customers to intervene in government antitrust suits. In dramatic contrast, there is no "elasticity" whatsoever in the Secretary's position regarding intervention in this case. The absolute rigidity and arbitrariness of the Secretary's position are best illustrated by his own statement:

"The short of the matter is that intervention is precluded by the LMRDA, irrespective of the degree of substantiality of the claims which the applicant for intervention presents or the wisdom of the Secretary's decision not to raise certain issues." (Brief for the Secretary of Labor in the Court of Appeals, p. 36.)

In this case there is no question that petitioner satisfies the conditions of Rule 24(a) for intervention of right. In fact, the Secretary conceded as much in

¹⁴ Inexplicably, the District Court cited *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 694 (1961), for the proposition that one may not intervene in the litigation of others as a matter of right unless "he shows the equivalent of being legally bound by the decree in their case." This is clearly no longer the law in view of the 1966 revision of Rule 24(a).

oral argument before the Court of Appeals, arguing that regardless of the degree to which petitioner may have substantial interests in the proceeding, and regardless of the degree to which those interests may be inadequately represented, intervention is absolutely precluded.

The desirability of intervention here is closely analogous to that recognized by this Court in *International Union, UAW v. Scofield*, 382 U.S. 205. The question in *Scofield* was whether parties wholly successful in NLRB unfair labor practice proceedings are entitled to intervene in court of appeals review and enforcement proceedings. In *Scofield*, as here,—and we have been able to find no other instance—it was argued that the relevant statutory scheme, Section 10(e) and (f) of the National Labor Relations Act, 29 U.S.C. 160(e) and (f), evinced a legislative intent to create an exception to normal procedural rules and absolutely to preclude intervention. This Court held, applying Rule 24 by analogy, that the successful party before the Board—whether a charged party or a charging party—is entitled to intervene in court of appeals proceedings.¹⁵ As the party whose complaint triggered the

¹⁵ There is a striking parallel between the NLRA enforcement mechanism for remedying unfair labor practices, and the enforcement scheme under Title IV of LMRDA. In each case, a charging party makes a complaint, in one case with the Regional Director of the National Labor Relations Board, and, in the other, with the Secretary of Labor. If the charging party is successful, in each case a quasi-judicial determination is made; in one case, that unfair labor practices have occurred, and, in the other, that violations of LMRDA have occurred which may have affected the election outcome. In each case, the extra-judicial determination is not self-enforcing. The major distinction is that the NLRB seeks enforcement of its orders in the courts of appeals, whereas the Secretary of Labor is directed to the district courts.

Secretary's Section 402(b) investigative and enforcement machinery, petitioner is in a posture similar to that of a successful charging party before the NLRB. Most, if not all, of the considerations underlying this Court's decision in *Scotfield* also obtain here.

First, this Court was concerned with avoiding duplication of judicial proceedings; this Court stressed that if the initial Board decision were reversed by the court of appeals, and the Board then entered an order adverse to the initially successful party, that party would then be able to seek court of appeals review, raising issues already presented to the court of appeals. Here, petitioner has causes of action independent of this proceeding by which he can try to vindicate his interest under the UMW constitution in assuring abolition of the improperly constituted locals and publication of an order dissipating the effect of the incumbent president's political manipulation of the pension fund. Here as in *Scotfield*, the policy of avoiding piecemeal judicial proceedings supports intervention.

Second, this Court expressed concern in *Scotfield* that denial of intervention in court of appeals proceedings would result in unfairness to the initially successful party in that the *stare decisis* effect of the court of appeals decision could adversely affect his interest in subsequent Board and court of appeals proceedings arising from the same complaint, and in collateral proceedings. Similarly, petitioner's interest in assuring effective guidelines for a rerun election and his interest in collateral proceedings will undoubtedly be affected by decision in this proceeding.¹⁶

¹⁶ For example, it is alleged in *Yablonski v. UMW* (C.A. 3436-69), in which petitioner is a plaintiff, that the incumbent officers utilized union funds to promote their reelection campaigns in vio-

Third, this Court in *Scofield* expressed concern that the Board might not adequately represent the interest of the successful party before the appellate court, either by failing vigorously to press the doctrine underlying its own decision or by failing to apply for certiorari in the event of reversal by the court of appeals. Here it is evident that the allegations and request for remedy stated in the Secretary's complaint are inadequate to represent petitioner's interest in assuring a democratic election.

Fourth, this Court in *Scofield* emphatically rejected the Board's argument that the successful charging party is "but another member of the public whose interests the Board is designed to serve" and that the Board "is the custodian of the 'public interest' to the exclusion of the so-called 'private interests' at stake." (382 U.S. at 204.) This Court stressed that utilization of the "rhetoric of 'public interest' . . . is not to imply that the public right excludes recognition of parochial private interests." *Ibid.* Nevertheless, the Secretary persists in arguing that the interests claimed by petitioner are not part of the "public interest" which LMRDA seeks to protect. This is not only inconsistent with *Scofield*, but with clear indications in the legislative history that the rights to be protected by the Secretary's Section 402(b) suits were those of union members, *supra*, pp. 24-25.

Fifth, the Court reasoned that denying participation to the successful party but allowing it to the

lation of their fiduciary duties to the union under Section 501(a) of LMRDA. Clearly, petitioner's interest in that suit will be practically affected by the resolution of the Secretary's allegation that union funds were used in the incumbents' campaign in violation of Section 401(g) of LMRDA.

unsuccessful party would prejudice the former for his success before the Board. This Court indicated that it would have to attribute capriciousness to Congress in order to conclude that only unsuccessful parties could participate in court of appeals review proceedings. Yet the same capricious distinction has been drawn here. There is no question but that a union officer may intervene as a defendant in a Section 402(b) suit against a union to set aside that officer's election. In *Shultz v. United Steelworkers of America*, 312 F. Supp. 538 (W.D. Pa.), the Secretary conceded that a union district director whose election was challenged by the Secretary's suit had sufficient interest to justify intervention "because he might lose his job." Inasmuch as the Secretary had found probable cause to believe that the district director's election was tainted by violations of Section 401, the intervening district director was clearly the "unsuccessful party" with respect to the Secretary's quasi-judicial determination. The Secretary—one might say "capriciously", given this Court's comments in *Scofield*—persists in the position that intervention by the unsuccessful charged party is consistent with LMRDA, but that intervention by the successful charging party is precluded.¹⁷

Further, intervention serves a useful purpose in assuring effective enforcement of LMRDA because the

¹⁷ As a practical matter, union incumbents, who have been "unsuccessful" with respect to the Secretary's quasi-judicial determination of probable cause, are adequately represented in district court proceedings challenging their elections, whether they intervene or not. This is because the incumbent officers shape union policy and hire union lawyers who will represent not only the union, but also the parochial interests of incumbent officers who want to keep their jobs.

Secretary and those designated by him to enforce Title IV have limited knowledge of the United Mine Workers' internal structure and have limited resources for investigating alleged violations. While the Secretary and his designees undoubtedly have expertise on union election processes, generally, they cannot be intimately familiar with the unique internal structure of the UMW and the subtle devices which may be used unlawfully to distort the election process. Limitations on their familiarity with these matters are aggravated by the refusal of the Secretary to exercise his unquestioned authority under Section 601(a) of LMRDA to initiate investigations prior to election. It must be noted that Section 402(b) of LMRDA allows the Secretary only 60 days for investigation of complaints submitted pursuant to Section 402(a). Given the Secretary's refusal to exercise his statutory power to investigate prior to election, the 60-day investigation period allowed by Section 402(b) cannot be sufficient fully to familiarize the Secretary with subtle abuses occurring in the context of a large, international election such as the one involved in this case. The Secretary's position regarding the "bogus" locals is a prime example of his unfamiliarity with internal UMW structure. The Secretary's failure to raise this issue seems to be based at least in part on a misconception of how these local unions arose, what purpose they serve, how they are controlled, the way in which retired miners have been assigned to them, and the method by which they have been voted in bulk for the incumbent officers. Hearings, Subcommittee on Labor, UMW Election—1970, p. 509. Petitioner has intimate knowledge of the internal operations of this particular union and he has thousands of sup-

porters in widely scattered locals who can call attention to violations and help collect evidence. Only with the reinforcement which his intervention can add, will representation of his interests be entirely adequate.

A final important reason for intervention stems from the fact that formulation of ground rules for a rerun election, and disposition of claimed violations, in practice, are the product of negotiations by the Secretary with the competing groups. Such negotiations are imbalanced when only the incumbents have legal standing to challenge solutions proposed by the Secretary. All of the pressures are on the Secretary to compromise with the incumbents, for the opposition, without intervention, has no legal leverage. The incumbents', and only the incumbents', agreement is required for a consent order or stipulation; the opposition's protests can be ignored. Just such one-sided pressure led this Court in *Cascade*, to speak of the dangers that the government would "knuckle under," (386 U.S., at 142) and to grant intervention to protect against this danger.

CONCLUSION

If one thing is clear it is that the trend of the law is toward free intervention where administrative action is concerned. All the fears and all the dangers which administrative agencies have conjured up about intervention have not been enough to persuade the courts to deny those with real interests the right to participate in defending those interests. *International Union, UAW v. Scofield, supra*. Indeed, there is an irony in even the suggestion that "the protected groups in an administrative program [should] pay for their protection by a sacrifice of procedural and litigating

rights. . . ." (Hart and Wechsler, *The Federal Courts and the Federal System*, 326 (1953).)

For the reasons stated, the petition should be granted and the decision below reversed.

Respectfully submitted,

JOSEPH L. RAUH, JR.

JOHN SILARD

ELLIOTT C. LICHTMAN

1001 Connecticut Ave., N. W.

Washington, D. C. 20036

JOSEPH A. YABLONSKI

CLARICE R. FELDMAN

1812 N Street, N. W.

Washington, D. C. 20036

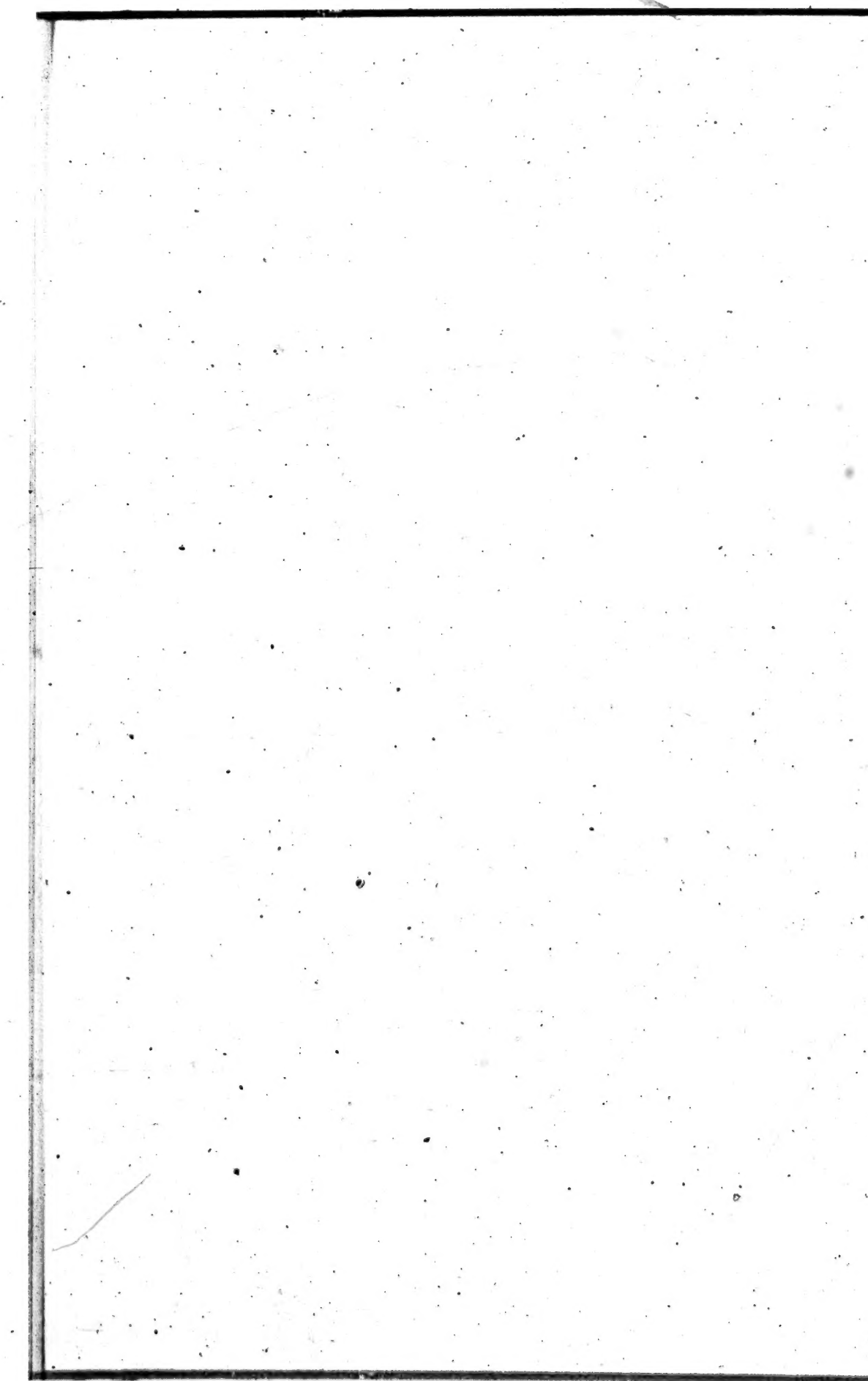
Of Counsel:

CLYDE W. SUMMERS

Wall and High Streets

New Haven, Connecticut

APPENDIX



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[no opinion]

No. 24,946

SEPTEMBER TERM, 1970

JAMES DAY HODGSON and MIKE TRBOVICH, *Appellant*,

v.

UNITED MINE WORKERS OF AMERICA

[Filed April 27, 1971]

NATHAN J. PAULSEN, Clerk

Appeal from the United States District Court for the
District of Columbia.

Before: WRIGHT, TAMM and ROBB, Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. See Local Rule 13(c).

On consideration of the foregoing, and this court being in substantial agreement with the memorandum opinion filed by the District Court, *Hodgson v. United Mine Workers of America*, 51 F.R.D. 270 (1970), it is ordered and adjudged by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES D. HODGSON, Secretary of Labor, *Plaintiff*,

v.

UNITED MINE WORKERS OF AMERICA, *Defendant*.

Civil Action No. 662-70

[Filed November 17, 1970]

JAMES F. DAVEY, Clerk

Memorandum Opinion

This is an action by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act, 29 U.S.C.A. § 401 *et seq.*, to set aside the election of defendant's officers held on December 9, 1969, and to compel defendant to maintain certain financial records. Applicant Miners for Democracy is an organization formed in April, 1970, for the purpose of bringing about reform in the defendant union; applicant Trbovich is a member of defendant union and Chairman of Miners for Democracy. Applicants seek to intervene in the action pursuant to Fed. R. Civ. P. 24(a), intervention as of right, or, failing that, pursuant to Rule 24(b), permissive intervention.

I.

As for the first cause of action, it is undisputed that the *exclusive* remedy for challenging an election already conducted is a suit by the Secretary of Labor pursuant to a complaint by a union member and a determination by the Secretary of "probable cause" to believe that a violation of the law governing elections has occurred. 29 U.S.C.A. §§ 482, 483; *Calhoon v. Harvey*, 379 U.S. 134 (1964); *Wirtz v. National Maritime Union of America*, 409 F.2d 1340 (2d Cir. 1969). A union member himself has standing neither to bring such a suit nor to compel the Secretary to bring

one. 29 U.S.C. §§ 482, 483; *Wirtz v. N.M.U.A., supra*; *Katrinic v. Wirtz*, 62 L.R.R.M. 2557, 53 L.C. ¶ 11,289 (D. D.C. 1966).

The legislative history of the Labor-Management Reporting and Disclosure Act makes us doubt that intervention by a union member in a suit by the Secretary to set aside an election would be consistent with the congressional purpose. The House bill provided that complaining union members themselves, rather than the Secretary, would bring a civil action in the federal district court to enforce the election provisions. 105 *Cong. Rec.* 16,489 (1959) (remarks of Senator Goldwater). The Senate version contained substantially what was enacted, namely, that the Secretary would be the exclusive enforcer of the election provisions of the Act. *Cong. Rec., supra*. We think the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and labelled it “exclusive” deprives this Court of jurisdiction to permit the former alternative via the route of intervention. 29 U.S.C.A. § 482; Fed. R. Civ. P. 82.

Applicant cites us to *International Union, U.A.W. Local 283 v. Scofield*, 382 U.S. 205 (1965), as authority for allowing intervention here. *Scofield* held that the successful party in an unfair labor practice proceeding before the N.L.R.B. has a right to intervene when the court of appeals reviews the Board's order. The main rationale of the decision was the desirability of avoiding multiple appeals. If the party successful before the Board is not allowed to intervene in the court of appeals and if the court of appeals reverses the Board and returns the case to it for further proceedings, then it is probable that the party who was not allowed to intervene in the first appeal will himself have the right to bring a second appeal. In the interests of judicial efficiency and fairness to the would-be intervenor, the Supreme Court considered it highly de-

sirable to have the court of appeals hear all the parties in one proceeding. *U.A.W. v. Scofield*, *supra*, at 212, 213.

The instant case, which arises under the Labor-Management Reporting and Disclosure Act (29 U.S.C.A. §§ 401 *et seq.*), is totally different from *Scofield*, which dealt with intervention under the National Labor Relations Act (29 U.S.C.A. § 151 *et seq.*). The would-be intervenor here has not already been successful before a lower tribunal, and there is no danger of a multiplicity of appeals if intervention is denied in this case. As Professor Moore says in discussing *Scofield*, "Where the prevention of multiple appeals is not at stake, the rule should not apply." 3B *Moore's Federal Practice* ¶ 24.06 [6.-8], at 24-132.

The only appellate court opinion squarely on point, and it is post-*Scofield*¹, denied intervention to a union member in an action by the Secretary to set aside an election. *Stein v. Wirtz*, 366 F.2d 188 (10th Cir.), *cert. denied* 386 U.S. 996 (1966). In *Stein*, the Secretary sued to set aside the election on the basis of a complaint by the applicant for intervention that the union had refused to permit him to be a candidate for the position of Business Manager. Two months after the filing of the action, the union and the Secretary stipulated that appellant would be eligible for candidacy in the following election, to be held eight months later. The Secretary and the union requested that the case be held in abeyance until after the elections when, assuming that the union complied fully with the terms of the stipulation, the Secretary would move to dismiss the action.

¹ The *Stein* court did not discuss *Scofield*. Applicant ascribes this failure to the Tenth Circuit's ignorance of the *Scofield* opinion, and he points out that *Stein* proceeded *pro se* in the court of appeals. We think it highly unlikely that the distinguished court in *Stein* was ignorant of a major Supreme Court opinion of the preceding term. A more likely explanation for the failure to mention *Scofield* is that the court in *Stein* did not consider *Scofield* to be relevant to the problem before it.

In affirming the district court's denial of intervention, the court of appeals said:

"Although appellant's subjective dissatisfaction with the Secretary's prosecution of this action is completely understandable, yet we are constrained to agree that the District Court was without jurisdiction to permit his intervention in a Title IV action." 366 F.2d at 139.

II.

What we have said against permitting intervention in the first cause of action applies also to the second cause, in which the Secretary seeks an injunction to compel the defendant union to maintain financial records from which the union's annual financial reports to the Secretary may be verified. 29 U.S.C.A. §§ 431, 436, 440. The Secretary is the one person authorized by the statute to seek such an injunction. 29 U.S.C.A. § 440.

Applicants undeniably have an interest in ensuring that union funds are spent for the sole benefit of the organization and its members. 29 U.S.C.A. § 501. They are already seeking to vindicate that interest in another suit in this court (Civil Action 3436-69) for an accounting, restitution and damages pursuant to 29 U.S.C.A. §§ 185, 501 (a) and (b). The issue in the applicants' pending suit is whether or not the union has misappropriated funds. In the instant suit the dispositive issue is quite different, namely, whether the union has failed to maintain records on the matters required to be reported to the Secretary (pursuant to 29 U.S.C.A. § 431) "which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness." 29 U.S.C.A. § 436.

One may not intervene as a matter of right in the litigation of others unless he shows the equivalent of being le-

gally bound by the decree in their case. Fed. R. Civ. P. 24(a)(2); *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 694 (1961); *Apache County v. United States*, 256 F. Supp. 903, 907 (D. D.C. three-judge panel 1966). Applicants have not made that showing here. As for permissive intervention, Fed. R. Civ. P. 24(b)(2), we do not perceive a sufficient nexus between applicants' interest and the Secretary's suit to justify it. At the same time, we believe applicants' own pending lawsuit to be an adequate means of asserting their rights.

The motion to intervene is denied.

William B. Bryant
Judge

Dated: March 17, 1970.

CLERK
Sup. Ct. U.S.
FILED
AUG 31 1971
E. ROBERT SEAVER, CLERK

CLERK
SUPREME COURT, U. S.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent,
and

MIKE TRBOVICH (Proposed Intervenor),
Petitioner,

—v.—

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent.

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE, IN SUPPORT OF PETITION
FOR CERTIORARI**

MELVIN L. WULF
SANFORD JAY ROSEN
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010
Attorneys for Amicus Curiae



IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent,
and
MIKE TRBOVICH (Proposed Intervenor),
Petitioner,

—v.—

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent.

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE, IN SUPPORT OF PETITION
FOR CERTIORARI**

Interest of *Amicus Curiae*

The American Civil Liberties Union is a nation-wide, non-partisan organization with approximately 160,000 members in the United States. It is engaged solely in the defense of those principles embodied in the Bill of Rights. During its fifty-year existence, the ACLU has been concerned with the special responsibility labor unions have to maintain democratic standards. In a membership organization, the freedom of election and balloting is the ultimate and most important freedom in the democratic conduct and control of the group. Hence, ACLU is espe-

cially concerned that the election provisions of the Labor-Management Reporting and Disclosure Act of 1959, Title IV, 29 U.S.C. §§482-483 (hereinafter LMRDA) are interpreted and administered in such a way as to most assure free and open union elections.

This case raises important questions concerning the ability of union members to intervene in law suits brought by the Secretary of Labor to enforce the provisions of Title IV. It concerns, therefore, proper judicial enforcement of the statutory guarantee of free and open union elections.

Letters of consent have been filed with the clerk.

Question Presented

Whether a member of a labor organization, who concededly satisfies all conditions for intervention of right under Rule 24 (a), FRCP, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary of Labor under the LMRDA, to set aside a union election.

Statement of the Case

The *Petition for Writ of Certiorari* brings before this Court one in a series of law suits brought in the course of recent efforts to reform and democratize one of the nation's largest labor unions, the United Mine Workers of America (hereinafter UMW). The history of these efforts, and of this law suit, are set out in some detail in the *Petition for Writ of Certiorari*, pp. 7-19. Suffice it to say, this Court is asked to review the refusal of the courts below to permit the Petitioner, Mike Trbovich, to intervene in the suit filed by the Secretary of Labor to set aside on grounds of massive election irregularities the UMW's December 9, 1969 election of International Officers.

The Petitioner was the campaign manager for the late Joseph A. "Jock" Yablonski, who unsuccessfully opposed the incumbent UMW president, W. A. Boyle, in the December 9, 1969 election. After the murder of Mr. Yablonski, and his wife and daughter, in January, 1970, the Petitioner succeeded to the complaint alleging election irregularities which had been filed by Mr. Yablonski on December 18, 1969. Presently, Petitioner is National Chairman of the Miners for Democracy, a reform party within the UMW.

On March 5, 1970, after conducting his investigation of the December 9, 1969 election, the Secretary of Labor filed the present law suit, based on Petitioner's complaint, in the District Court for the District of Columbia. On October 2, 1970, Petitioner moved, on behalf of himself and the Miners for Democracy, under Rule 24 (a), for leave to intervene as of right or, in the alternative, for permission to intervene under Rule 24 (b). He proposed additional allegations and claims for relief, which are set forth on pages 17 to 18 of the *Petition for Writ of Certiorari*. Intervention was denied solely on the ground that by according the Secretary sole power to initiate suit under Title IV, Congress also precluded intervention by aggrieved union members.

Reasons For Granting the Writ

Certiorari should be granted because the courts below decided an important question of federal law which has not been, but should be, settled by this Court, namely whether a member of a labor organization, who concededly satisfied all conditions for intervention of right under Rule 24 (a), FRCP, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary under the LMRDA, to set aside a union election.

This Court has held that suits falling "squarely within Title IV of the [LMRD] Act . . . are to be resolved by the administrative and judicial procedures set out in that Title." *Calhoon v. Harvey*, 379 U.S. 134, 141. With certain exceptions not relevant here, the statute "sets up an exclusive method for protecting Title IV rights, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV. Upon complaint the Secretary investigates and if he finds probable cause to believe that Title IV has been violated, he may file suit in the appropriate district court." *Calhoon v. Harvey*, *supra*, 379 U.S. at 140.

According to this Court, Congress sought to accomplish three goals through Title IV's exclusive enforcement machinery. (1) Individuals should not be permitted "to block or delay union elections by filing federal-court suits for violation of Title IV." *Calhoon v. Harvey*, *supra*, 379 U.S. at 140. (2) "Reliance on the discretion of the Secretary is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies . . ." *Calhoon v. Harvey*, *supra*, 379 U.S. at 140. (3) When unions fail to remedy election difficulties internally, Congress chose "to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion *before resort to the courts*." *Calhoon v. Harvey*, *supra*, 379 U.S. at 140-41. (Emphasis added.)

A fair reading of the *Calhoon* decision makes it clear that the Court ruled that the Secretary has exclusive discretion in deciding whether suit will be brought to enforce Title IV rights. It is a considerable extension of *Calhoon*, however, to the proposition that once suit is filed by the Secretary, aggrieved union members are barred from inter-

vening even though they meet the requisites of Rule 24 of the Federal Rules of Civil Procedure. But the Courts below made precisely this extension, as did the courts in *Stein v. Wirtz*, 366 F.2d 188 (10th Cir.), *cert. denied*, 386 U.S. 996 (1966).

This Court's holding and rationale in *Calhoon* do not by themselves justify preclusion of intervention by interested and aggrieved union members *once suit has been filed*. In that case the Court was concerned only with exclusivity of the Title IV machinery, and the Secretary's control over enforcement, "*before resort to the courts*," *Calhoon v. Harvey*, *supra*, 379 U.S. at 140-141. Once the Secretary files his suit, his exclusive control ends. The trial court is then in control. Different considerations become relevant to the question of who may participate in the proceedings. See Shapiro, *Some Thoughts on Intervention before Courts, Agencies, and Arbitrators*, 81 Harv. L. Rev. 721, 726-27 (1967). Further, none of the policy considerations discussed in *Calhoon* pertains once the Secretary has decided to file suit: (1) If any union election is blocked or delayed, it is because the Secretary has exercised his exclusive jurisdiction to bring suit. Intervention by interested individuals will not change that fact. (2) Once the Secretary has filed suit, the time for "allow[ing] unions great latitude in resolving their own internal controversies . . ." obviously has passed. *Calhoon v. Harvey*, *supra*, 379 U.S. at 140. (3) So has hope of "bringing about a settlement through discussion *before resort to the courts*." *Calhoon v. Harvey*, *supra*, 379 U.S. at 140-41. (Emphasis added.)

It is not at all unusual for parties who are unable to bring suit to be empowered to intervene once suit is brought. For example, this Court has long held in diversity of jurisdiction cases that parties may intervene even

though they would have destroyed federal court diversity jurisdiction if they had originally been parties. *Phelps v. Oaks*, 117 U.S. 236 (1886). See *Formulabs, Inc. v. Hartley Pen Co.*, 318 F.2d 485 (9th Cir. 1963), *cert. denied*, 375 U.S. 945; *Pennsylvania R.R. v. Erie Avenue Warehouse Co.*, 302 F.2d 843, 845 (3rd Cir. 1962).

A compelling precedent in a closely analogous area indicates that the *Calhoon* principle should not be extended. In *International Union, UAW v. Scofield*, 382 U.S. 205, this Court decided that parties who are wholly successful in unfair labor practice proceedings before the National Labor Relations Board have a right to intervene in the Court of Appeals review proceedings. Just as under Title IV of the LMRDA, the scheme of the National Labor Relations Act (hereinafter NLRA) places in the Board and its General Counsel exclusive power over enforcement of the statute and prosecution of violations. Just as under Title IV, the NLRA was silent with respect to the right of a private party, who is successful in the administrative process, to intervene in judicial review proceedings. Just as under Title IV, in the NLRA, public and private interests are "interblend[ed] in the intricate statutory scheme." *International Union, UAW v. Scofield*, *supra*, 382 U.S. at 220. Yet in *Scofield*, the Court held in favor of intervention, declaring: "To employ the rhetoric of 'public interest,' however, is not to imply that the public right excludes recognition of parochial private interests." 382 U.S. at 218.

In the light of the *Scofield* precedent, it cannot be gained that *Calhoon* should be extended to preclude intervention by complainants under Title IV, who are successful before the Secretary. Compare *Shultz v. United Steelworkers of America*, 312 F. Supp. 538, 539 (W.D. Pa. 1970), where a union officer whose election was challenged by the Secretary's suit was held to sufficient interest to

justify intervention "to protect his property interests"—presumably in his job.

Even apart from the *Scofield* decision, it is by no means clear that Title IV should be read to preclude intervention by successful complainants in suits filed by the Secretary.

First, Title IV is itself silent on the point. Although the enforcement machinery established in Title IV is exclusive, the provisions for enforcement are to be construed generously, to assure vindication of "the interests protected by §401." *Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 475. Hence this Court has held that an intervening union election does not moot a suit brought by the Secretary (*Wirtz v. Local 153, supra*), and the Secretary's cause of action under the statute is not limited solely to the allegations made in the union member's complaint to the union and to the Secretary (*Wirtz v. Local 125, Laborers' Int'l Union*, 389 U.S. 477). Similarly, where an aggrieved union member can expand upon the Secretary's district court complaint, and thereby assure complete vindication of the interests protected by §401, 29 U.S.C. §481 (see *Petition for Writ of Certiorari*, pp. 35-37), it seems appropriate that he should be allowed to intervene in the Secretary's suit. The legislative history of Title IV amply supports an interpretation which supports such intervention. See *Petition for Writ of Certiorari*, pp. 23-29.

Second, Title IV was enacted seven years prior to the 1966 amendment of Rule 24, which governs intervention generally in district court suits. According to this Court, "some elasticity was injected" in Rule 24 by the 1966 amendment. *Cascade National Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129, 134. As the Secretary of Labor has conceded in oral argument (*Petition for Writ of Certiorari*, p. 18), the Petitioner meets all the requisites for intervention under Rule 24. It is therefore necessary

for this Court to resolve the question whether Title IV, which preceded issuance of amended Rule 24, constitutes an exception to the general rule of civil procedure which permits intervention as a matter of right:

when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Third, compelling issues of fairness, not unlike those of constitutional due process, are present in this case and should be resolved by this Court. Affirmative steps taken by the Petitioner were jurisdictional requisites to the Secretary's cause of action. 29 U.S.C. §482. The interest being sued upon is that of the Petitioner, and those he represents, not that of the Secretary. The Petitioner and those he represents will feel the burden or gain the benefit of any settlement of this law suit, not the Secretary. The Petitioner and those he represents are the experts about the Respondent-Union and its election processes (*Petition for Writ of Certiorari*, pp. 9-17, 35-37), not the Secretary. With the federal courts increasingly enabling private parties to act as "private attorneys general" to enforce laws securing the public interest it seems strange indeed to preclude interested private parties, like the Petitioner, from intervening in public law suits designed more to secure their interests than to secure those of the public. See, e.g., *Common Cause v. Democratic National Committee*, D. Ct. D.C. Civ. Action 61-71 (1971); *Office of Communication, United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966); see also *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150.

CONCLUSION

Because the issues in this case are of paramount importance to the administration of Title IV of the LMRDA, and to vindication of the interests secured thereunder, *amicus curiae* respectfully requests this Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

MELVIN L. WULF

SANFORD JAY ROSEN

American Civil Liberties Union
Foundation

156 Fifth Avenue

New York, New York 10010

Attorneys for Amicus Curiae

LIBRARY
U.S. SUPREME COURT
No. 71-119

Supreme Court, U.S.
FILED
SEP 10 1971

In the Supreme Court of the United States

OCTOBER TERM, 1971

MIKE TRBOVICH, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General.

L. PATRICK GRAY, III,
Assistant Attorney General.

WALTER H. FLEISCHER,
RAYMOND D. BATTOCCHI,
Attorneys,

Department of Justice.
Washington, D.C. 20530.

JETER S. RAY,
Acting Solicitor of Labor.

GEORGE T. AVERY,
Associate Solicitor,

BEATE BLOCH,
EDWIN S. HOPSON,
Attorneys,

Department of Labor,
Washington, D.C. 20210.

INDEX

	Page
Opinions below-----	1
Jurisdiction -----	1
Question presented-----	2
Statute involved-----	2
Statement -----	3
Argument -----	6
Conclusion -----	15

CITATIONS

Cases:

<i>Acuff v. United Papermakers and Paperworkers</i> , 404 F. 2d 169, certiorari denied, 394 U.S. 987-----	11
<i>Alleghany Corporation v. Kirby</i> , 344 F. 2d 571, certiorari granted, 381 U.S. 933, certiorari dismissed, 384 U.S. 28-----	11
<i>Altman v. Wirtz</i> , 56 LRRM 2651, 50 L.C. ¶19,211 -----	7
<i>Calhoon v. Harvey</i> , 379 U.S. 134-----	7, 8
<i>DeVito v. Shultz</i> , 72 LRRM 2682-----	7
<i>International Union, U.A.W. v. Scofield</i> , 382 U.S. 205-----	11, 12, 13
<i>Katrinic v. Wirtz</i> , 62 LRRM 2557, 53 L.C. ¶11,289 -----	7
<i>Martin v. Kalvar Corp.</i> , 411 F. 2d 552-----	11
<i>McCarthy v. Wirtz</i> , 65 LRRM 2411, 55 L.C. ¶11,944 -----	7

Cases—Continued

<i>Morrissey v. Shultz</i> , 74 LRRM 2679, 62 L.C. ¶10,821	7
<i>Reynolds v. Marlene Industries</i> , 250 F. Supp. 722	12
<i>Schultz v. United Steelworkers of America</i> , 312 F. Supp. 538	13
<i>Schultz v. United Steelworkers of America</i> (District 15), 73 LRRM 2940	9
<i>Schultz v. United Steelworkers of America</i> (District 19), 74 LRRM 2222	9, 14
<i>Stadin v. Union Electric Company</i> , 309 F. 2d 912	11
<i>Stein v. Wirtz</i> , 366 F. 2d 188, certiorari denied, 386 U.S. 996	7, 8
<i>Wirtz v. Local 12, I.U.O.E.</i> , 66 LRRM 2080	8
<i>Wirtz v. Local 30, Operating Engineers</i> , 34 F.R.D. 13	13
<i>Wirtz v. Local 30, Operating Engineers</i> , 54 LRRM 2577, 48 L.C. ¶18,569	7, 13
<i>Wirtz v. Local 153, Glass Bottle Blowers Ass'n</i> , 389 U.S. 463	7, 10
<i>Wirtz v. Local 825, I.U.O.E.</i> , 60 LRRM 2092	8
<i>Wirtz v. Local 1377, I.B.E.W.</i> , 288 F. Supp. 914	8
<i>Wirtz v. Local Union 125, Laborers' International Union</i> , 389 U.S. 477	10
<i>Wirtz v. National Maritime Union</i> , 409 F. 2d 1340	2, 9, 12

Statutes:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.

401 *et seq.*:

Section 210-----	14
Section 401-----	3
Section 401(c)-----	9
Section 401(e)-----	5
Section 402(a)-----	2, 3, 6
Section 402(b)-----	2, 3, 14
Section 403-----	3, 6

Miscellaneous:

Rule 24(a)(2), Federal Rules of Civil Procedure-----	8, 10
--	-------

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

MIKE TRBOVICH, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 2a-6a) is reported at 51 F.R.D. 270. The judgment of the court of appeals (Pet. App. 1a) is not officially reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a) was entered on April 27, 1971. The petition for a writ of certiorari was filed on July 23, 1971. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

(1)

QUESTION PRESENTED

Whether a union member has a right to intervene in an action brought by the Secretary of Labor under Section 402 of the Labor-Management Reporting and Disclosure Act of 1959 to set aside a union election.

STATUTE INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, pertinently provides:

§ 402, 29 U.S.C. 482:

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). * * *

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization * * *.

§ 403, 29 U.S.C. 483:

* * * The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

STATEMENT¹

This action was brought by the Secretary of Labor pursuant to Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959 to set aside the election of International officers held by defendant, United Mine Workers of America, in 1969. The challenged election was held on December 9, 1969. The contest for the presidency of the Union became a subject of national notoriety when the defeated candidate, Joseph A. Yablonski, and his wife and daughter were found murdered in their home, early in January 1970. Thereafter, the present petitioner, who had been Yablonski's campaign manager, filed a formal complaint with the Secretary of Labor concerning the conduct of the election.²

After an extensive investigation, the Secretary filed this action, alleging numerous violations of Section 401 of the Act (see Pet. 9-10) in the conduct of the election. The Secretary also sought an injunction to

¹ The facts stated herein are not in dispute and, where no other citations are given, are also stated in the petition.

² Yablonski had invoked his internal remedies by filing a protest with the International Executive Board challenging the conduct of the election. After the deaths of the Yablonski family, the union waived the exhaustion of remedies requirement of Section 402(a) of the Act so that the Secretary could begin his investigation without further delay.

require the union to maintain adequate financial records. A preliminary injunction has been entered, requiring the union to maintain adequate documentation supporting all disbursements, detailed records of financial transactions between the International Union and its districts, and records supporting the reports required under Title II of the Act. Voluminous interrogatories and requests for admissions have been exchanged and answered by the parties, numerous depositions have been taken by both parties, and a trial is scheduled for September 13, 1971.

Petitioner seeks to intervene in this action as the member of the Union whose complaint triggered the Secretary's investigation preceding institution of the lawsuit, and as chairman of the Miners for Democracy (MFD), a dissident group of defendant's members.

Petitioner seeks to add to the Secretary's complaint two additional charges of alleged violation of the Act: (1) the continued maintenance of what petitioner calls "bogus" local unions, composed entirely or primarily of retired members; and (2) the action of defendant's president, Anthony Boyle, as trustee of the United Mine Workers of America Welfare and Retirement Fund, six months before the election, in voting for an increase in the amount of the monthly pension paid to retired bituminous coal miners. As petitioner's motion for intervention shows (see exhibit C3 attached to petitioner's motion for intervention), each of these charges was carefully considered by the Department

of Labor before it was decided that they should not be included in the suit.³

Petitioner's proposed complaint and intervention includes prayers for additional relief stemming from the two charges discussed above,⁴ and also seeks the

³ In brief, the Secretary decided with respect to the first charge that the International Union had consistently interpreted the constitutional provision relied on by the petitioner as precluding the formation of local unions having fewer than ten active members, but not as requiring a local union to be disbanded if at any time thereafter it had fewer than ten active members; that this interpretation was not unreasonable; and that even if the maintenance of local unions composed primarily of retired members were improper, the result of the election could not have been affected thereby, since retired members concededly had the right to vote, and it made no difference whether these votes were cast through pensioner locals or at polling facilities established by other local unions. With respect to the charge concerning the pension increase, the Secretary concluded that Boyle was only one of three trustees of the Welfare and Retirement Fund, and that the evidence did not warrant a charge of improper collusion with the employer trustee; that Boyle's action in voting for the increase was consistent with his previously announced position in favor of such an increase, and with numerous resolutions introduced at the last United Mine Workers convention in favor of such an increase; that the timing of the increase resulted as much from the fact that this was his first opportunity to take action with respect to pensions as from the fact that an election campaign was in progress; that if action to provide increased or additional benefits for union members were subject to challenge because it took place during an election campaign, collective bargaining could be brought to a virtual standstill when an election was imminent; and that this was not the type of "interference" contemplated by Section 401(e).

⁴ Petitioner seeks an order directing the defendant to disband all local unions which it contends exist in violation of

appointment of a board of monitors to oversee all of defendant's financial affairs, and the establishment of rules, either by the court or by a court-appointed panel, for the conduct of a new election.⁵

ARGUMENT

There is no reason for this Court to review the decision below, which is clearly correct, is supported by the language of the Act and its legislative history, and is in accord with the decisions of the only other court of appeals and all the district courts which have considered the question.

1. The Act provides that the exclusive remedy for the enforcement of Title IV is an action by the Secretary of Labor (29 U.S.C. 483). Upon receipt of a member's complaint filed in accordance with the provisions of Section 402(a), the Secretary is to conduct an investigation and to file a civil action only if he finds probable cause to believe that a violation of the Title has occurred in the conduct of a union election.⁶

the union's constitution, and to transfer their members to other local unions; he also seeks publication of a ruling to the effect that President Boyle breached his fiduciary duty to the union members by voting to increase pensions in order to further his own campaign.

⁵ Petitioner also seeks reasonable attorneys' fees and costs.

⁶ Petitioner incorrectly refers to such finding as a "quasi-judicial" determination (Pet. 5, 35). The finding is not made pursuant to any formal administrative proceeding, and does not result in any directive or order; it leads only to the filing of a complaint with a court, which makes its own findings of fact, conclusions of law and judgment on the basis of the evidence presented to it.

As this Court has repeatedly confirmed, the statutory scheme expresses the plain congressional intent to entrust enforcement of Title IV to the expertise and discretion of the Secretary of Labor. *Calhoon v. Harvey*, 379 U.S. 134, 140; *Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 471-473; *Wirtz v. Local Union 125, Laborers' International, Union*, 389 U.S. 477, 482-483. Petitioner seeks, through his intervention, to substitute his judgment for that of the Secretary.

Petitioner does not, and could not, contend that the Act bestows upon him any right to institute a separate action under Title IV. See *Calhoon v. Harvey*, 379 U.S. 134. However, his proposed complaint in intervention seeks to interject into the present case allegations of violations with respect to which the Secretary has not made a finding of probable cause—allegations which he claims a right to bring before the court only because of the fortuitous circumstance that the Secretary has filed a suit charging other violations.

The only other court of appeals decision directly in point is *Stein v. Wirtz*, 366 F. 2d 188 (C.A. 10), certiorari denied, 386 U.S. 996. Indeed, Stein's claim to

⁷ The courts have consistently dismissed actions instituted to compel the Secretary to file suit under Title IV where he has not made the statutory finding of probable cause. *McCarthy v. Wirtz*, 65 LRRM 2411, 55 L.C. ¶11,944 (E.D. Missouri); *Morrissey v. Shultz*, 74 LRRM 2679, 62 L.C. ¶10,821 (S.D.N.Y.); *Altman v. Wirtz*, 56 LRRM 2651, 50 L.C. ¶19,211 (D.D.C.); *Katrinic v. Wirtz*, 62 LRRM 2557, 53 L.C. ¶11,289 (D.D.C.); *Wirtz v. Local 30, Operating Engineers*, 54 LRRM 2577, 48 L.C. ¶18,569 (S.D.N.Y.); *DeVito v. Shultz*, 72 LRRM 2682 (D.D.C.).

an interest in the subject of the litigation was far more direct than that of the proposed intervenor in this case. The *Stein* case was brought to set aside a union election for a single office, and the only violation alleged was the union's denial of Stein's right to be a candidate for that office. Several months before the union's next regular election, the Secretary entered into a stipulation for settlement of the case on the basis of the union's agreement to permit Stein to be a candidate in that forthcoming election. Stein, dissatisfied with the settlement, sought to intervene. The court of appeals affirmed the district court's denial of his motion, saying (*id.* at 189):

The Act confers upon the Secretary of Labor the *exclusive* right to bring civil actions against labor organizations for violations of members' rights in union elections and election procedures. 29 U.S.C. §§ 482(b), 483; *Calhoon v. Harvey*, 379 U.S. 134, 85 S. Ct. 292, 13 L. Ed. 2d 190. There being no way for appellant to prosecute this type of action by original suit, he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction. Fed. R. Civ. P. 82; *Bantel v. McGrath*, 10 Cir., 215 F. 2d 297.

The *Stein* case (which was decided after the 1966 amendment to Rule 24(a)(2)) is in accord with numerous district court decisions denying the right of union members to intervene in Title IV actions.

Wirtz v. Local 825, I.U.O.E., 60 LRRM 2092 (D. N.J.);
Wirtz v. Local 1377, I.B.E.W., 288 F. Supp. 914 (N.D. Ohio);
Wirtz v. Local 12, I.U.O.E., 66 LRRM 2080 (C.D. Cal.);

See also *Wirtz v. National Maritime Union*, 409 F. 2d 1340 (C.A. 2).

2. Petitioner's discussion of the legislative history draws an unrealistic and unfounded distinction between the Secretary's exclusive right to initiate Title IV litigation and his claimed right of intervention once such litigation has begun. In fact, the legislative history contains no indication that Congress intended anyone but the Secretary to control the conduct of Title IV litigation. Congress gave individual members the exclusive right to seek enforcement of their Title I rights through the courts, and gave them the right to pursue remedies under Title III either individually or through the Secretary. Under Title IV, Congress reserved to individual members certain pre-election rights of individual action (Section 401(c); see Pet. pp. 7-8), but deliberately, and after thorough consideration, made a suit by the Secretary the exclusive means for the enforcement of post-election Title IV rights. The only "legislative history" cited by petitioner which explicitly suggests that the Secretary's exclusive enforcement rights do not preclude individual intervention in Title IV litigation is the legislative afterthought of one of the sponsors of the Act, made in the context of a highly charged political atmosphere some twelve years after the passage of the Act (Pet. 29).

3. Even apart from the preclusion of petitioner's intervention by the statutory scheme of the Act, he

Shultz v. United Steelworkers of America (District 15), 73 LRRM 2940 (W.D. Pa.); *Shultz v. United Steelworkers of America* (District 19), 74 LRRM 2222 (W.D. Pa).

has not made out a case for intervention as of right under Rule 24(a)(2), Fed. R. Civ. P.⁹ Petitioner's claimed interest in the outcome of the litigation is no greater than that of any other member of the defendant union who might desire to become a candidate in a new election ordered by the court as a result of this action. It is the function of the Secretary under the Act to represent the rights of all members of the union in the electoral process, and to assure them the free exercise of the rights guaranteed in Title IV. To the extent that petitioner claims a special interest as the leader of a particular faction within the union, his rights are not protected by Title IV. As this Court has said, the Act was not designed "merely to protect the right of a union member to run for a particular office in a particular election. * * * Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." *Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, *supra*, 389 U.S. at 475; see *Wirtz v. Local Union 125, Laborers' International Union*, *supra*, 389 U.S. at 483.

Petitioner has not only failed to show a legally cognizable interest in the subject of the litigation apart from the interest represented by the Secretary, he has also failed to establish that the Secretary's representation of his interest as a union member is inadequate. Under Rule 24(a)(2), an applicant whose

⁹ While petitioner repeatedly refers to the Secretary's alleged concession that petitioner satisfies all conditions for intervention of right under Rule 24(a)(2), the Secretary is unaware of any such concession.

"interest is adequately represented by existing parties" has no right to intervene. Petitioner has demonstrated only a difference of opinion concerning the best method of handling the litigation, and this is not a sufficient showing of inadequacy of representation. *Stadin v. Union Electric Company*, 309 F. 2d 912, 919 (C.A. 8); *Alleghany Corporation v. Kirby*, 344 F.2d 571, 573 (C.A. 2), certiorari granted, 381 U.S. 933, certiorari dismissed, 384 U.S. 28; *Acuff v. United Papermakers and Paperworkers*, 404 F.2d 169, 171-172 (C.A. 5), certiorari denied, 394 U.S. 987; *Martin v. Kalvar Corp.*, 411 F.2d 552, 553 (C.A. 5).

4. *International Union, U.A.W. v. Scofield*, 382 U.S. 205, does not support petitioner's claim for intervention. In *Scofield*, this Court held that the successful party in a proceeding before the National Labor Relations Board could intervene to protect his victory in an appeal to the court of appeals by the unsuccessful party. The situation there was quite different from that presently before the court. Under the National Labor Relations Act, as this Court noted in *Scofield*, Congress has established a system in which (*id.* at 219):

* * * When the General Counsel issues a complaint and the proceeding reaches the adjudicative stage, the course the hearing will take is in the agency's control, but the charging party is accorded formal recognition: he participates in the hearings as a "party"; he may call witnesses and cross-examine others, may file exceptions to any order of the trial examiner, and

may file a petition for reconsideration to a Board order * * *. Of course, if the Board dismisses the complaint, he can obtain review as a person aggrieved * * *.

In *Scofield*, this Court held that to allow a party, which had already participated in the fact-finding procedure to protect his victory on appeal was justified by the intent of Congress in passing the National Labor Relations Act, and that the intervention would not "impair effective discharge" of the Board's duties (382 U.S. at 215) and would save judicial time and energy by preventing a second appeal by the charging party if the Board's decision were reversed (*id.* at 212).

By contrast, under the present Act, there is nothing analogous to an agency adjudicative hearing with the "charging party" as a statutorily recognized party. See *Wirtz v. National Maritime Union, supra*; *Reynolds v. Marlene Industries*, 250 S. Supp. 722 (S.D. N.Y.). Hence, there is no applicability here of this Court's concern in *Scofield* that the successful party in the initial proceedings before the Board could be adversely affected in subsequent proceedings before the Board and reviewing court by the *stare decisis* effect of the decision on the first review.

Moreover, in *Scofield*, the Court pointed out that intervention could not impede or delay resolution of the issues, since the record was completed before the Board prior to the permitted intervention. Here, the

record will not be complete until after the trial, and the trial itself would inevitably be delayed and protracted by the additional issues which petitioner seeks to interject.

In National Labor Relations Board proceedings, as the Court further pointed out in *Scofield*, the unsuccessful party has a statutory right to initiate and participate in review proceedings, and it would be anomalous to deny the successful party the same privilege. Under the present Act, there is no "unsuccessful party." The complaining union member has no right to judicial review of the Secretary's determination that there is no probable cause to believe that violations occurred which warrant the institution of suit to set the election aside;¹⁰ and the union cannot dispute the Secretary's finding that there is such probable cause, but must defend on the basis of the evidence presented to the court.¹¹ The judicial proceeding is entirely *de novo*, and is not a proceeding for review of an administrative determination. And, as previously discussed, Congress, for good reasons,

¹⁰ See cases cited in note 6, *supra*.

¹¹ *Wirtz v. Local 30, Operating Engineers*, 34 F.R.D. 13, 14 (S.D. N.Y.). Petitioner asserts there is "no question" concerning a union officer's right to intervene as a party defendant in a Title IV suit (Pet. 35), citing the only judicial decision upholding such right, *Shultz v. United Steelworkers of America*, 312 F. Supp. 538 (W.D. Pa.). The Secretary in that case opposed

conferred on the Secretary the right to institute such judicial proceedings to enforce the Act, and deliberately withheld that right from individual complainants.

5. We do not discuss in detail petitioner's contentions with respect to the prayer for injunctive relief against defendant's recordkeeping violations. Petitioner does not seek to justify separately his proposed intervention on this count, and the same principles apply. This count is founded on Section 210 of the Act (29 U.S.C. 440), which like Section 402(b) (29 U.S.C. 482 (b)), provides for an action by the Secretary, and not by an individual union member.

the officer's intervention, and has appealed from the decision. Significantly, in the very same case, the same district judge denied a motion to intervene by the complaining member, *Shultz v. United Steelworkers of America*, 74 LRRM 2222 (W.D. Pa.). The decision distinguished between the complainant, who had only the right in common with all other union members to seek the contested office, and the incumbent officer, who stood to lose his job if the election were set aside.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

L. PATRICK GRAY, III,
Assistant Attorney General.

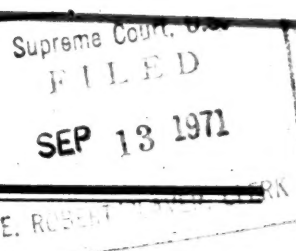
WALTER H. FLEISCHER,
RAYMOND D. BATTOCCHI,
Attorneys.

JETER S. RAY,
Acting Solicitor of Labor,

GEORGE T. AVERY,
Associate Solicitor,

BEATE BLOCH,
EDWIN S. HOPSON,
Attorneys,
Department of Labor.

SEPTEMBER 1971.



IN THE
Supreme Court of the United States
OCTOBER TERM, 1971

No. 71-119

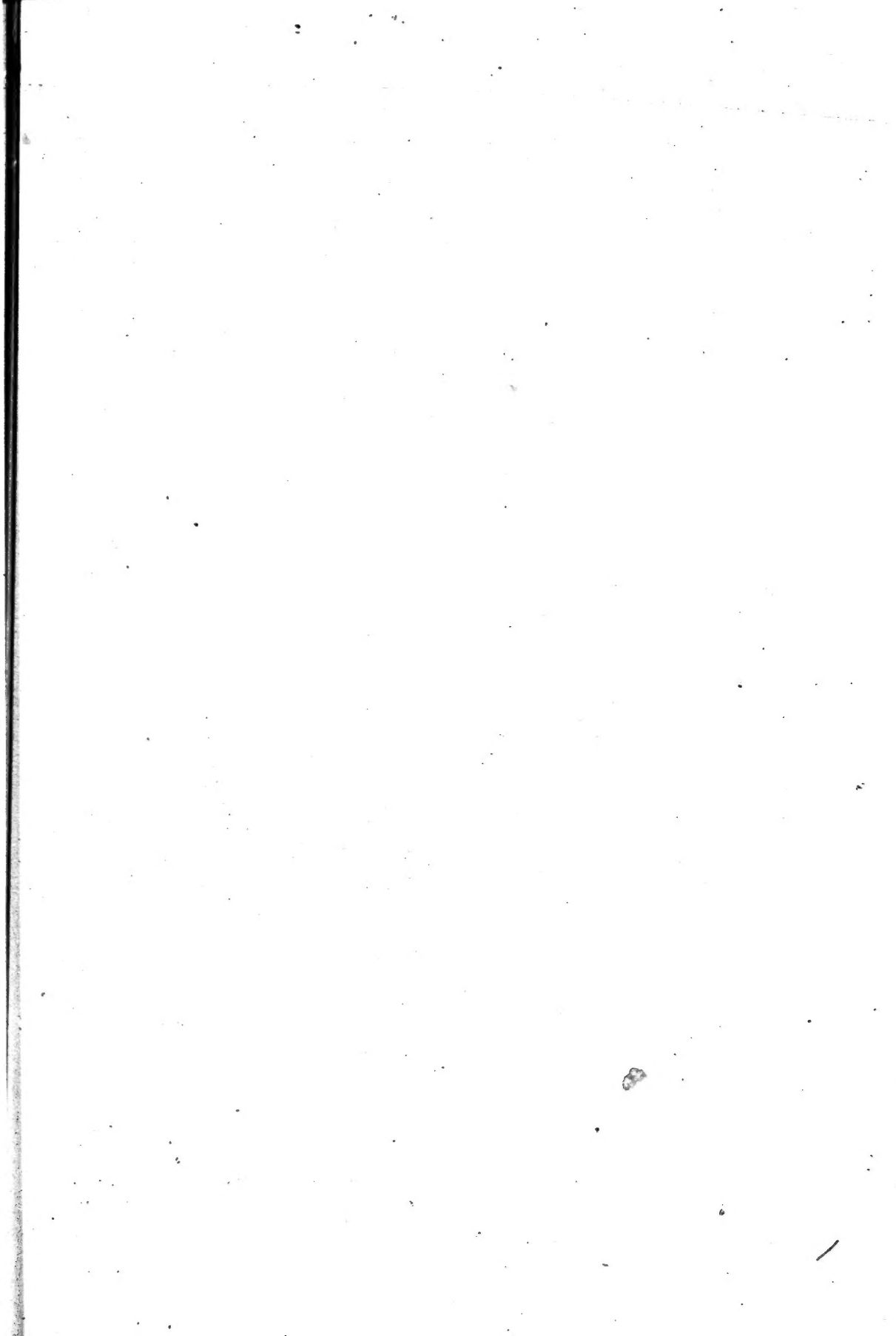
JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent
and
MIKE TRBOVICH (Proposed Intervenor), *Petitioner*
v.
UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent

On Petition For Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT, UNITED MINE WORKERS OF
AMERICA IN OPPOSITION

EDWARD L. CAREY,
HARRISON COMBS,
WILLARD P. OWENS,
CHARLES L. WIDMAN,
WALTER E. GILLCRIST,
Counsel for Respondent,
United Mine Workers of America
900 Fifteenth Street, N. W.
Washington, D. C. 20005





INDEX

TABLE OF CONTENTS

	Page
Statutory Provisions	1
Question Presented for Review	2
Statement of the Case	2
Argument	7
I. Enforcement of Post-Election Remedy to Challenge a Union Election Is Statutorily the Exclusive Function of the Secretary of Labor	8
II. Interpretation of Title IV Post-Election Remedies by Federal Courts	9
III. Petitioner's Reliance on Cases Involving Other Statutes Is Misplaced	10
Conclusion	12
Appendix	1a

AUTHORITIES CITED

CASES:

Amalgamated Utility Workers v. Consolidated Edison Co. of New York, Inc., 309 U.S. 261 (1940)	11
Blankenship, et al. v. W. A. Boyle, et al., Civil No. 2186-69 (D.D.C.)	5
Calhoon v. Harvey, 379 U.S. 134 (1964)	8, 9
Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129 (1967)	10
DeVito v. Shultz, 300 F. Supp. 381 (D.D.C., 1969)	10
Katrinic v. Wirtz, 62 L.R.R.M. 2557 (D.D.C., 1966) ...	10
Mamula v. United Steelworkers of America, 304 F.2d 108 (3rd Cir., 1962)	10

	Page
McGuire v. Locomotive Engineers, 426 F.2d 504 (6th Cir., 1970)	10
Morrissey v. Shultz, 311 F. Supp. 744, 74 L.R.R.M. 2679 (S.D. N.Y., 1970)	10
National Labor Relations Board v. Exchange Parts Co., 375 U.S. 405 (1964)	5
Ravaschieri v. Schultz, 75 L.R.R.M. 2272 (S.D. N.Y., 1970)	10
Sears, Roebuck and Co. v. Carpet, Etc., Local 419, 410 F.2d 1148 (10th Cir., 1969)	11
Shultz v. Steelworkers, 313 F. Supp. 549, 74 L.R.R.M. 2222 (W.D. Pa., 1970)	9
Stein v. Wirtz, 366 F.2d 188 (1966); certiorari denied, 386 U.S. 996 (1967)	7, 9
Wirtz v. Hotel, Motel, and Club Employees Union, Local 6, 391 U.S. 492 (1968)	9
Wirtz v. Local Union 410, et al., Int'l Union of Operating Eng'rs, 366 F.2d 438 (2nd Cir., 1966)	10
Wirtz v. Local 560, Teamsters, 61 L.R.R.M. 2470 (D. N.J., 1965)	10
Wirtz v. Local 825, 60 L.R.R.M. 2092 (D. N.J., 1965) ..	10
Wirtz v. Local 1377, Int'l Bhd. of Elec. Workers, 288 F. Supp. 914 (N.D. Ohio, 1968)	10
Wirtz v. National Maritime Union of America, 409 F. 2d 1340 (2nd Cir., 1969)	9
Wirtz v. Operating Engineers, 66 L.R.R.M. 2080 (C.D. Calif., 1967)	10
International Union of United Automobile Workers, AFL-CIO, Local 283 v. Scofield, 382 U.S. 205 (1965)	10

STATUTES INVOLVED:

Landrum-Griffin Act:

Title II, § 201, 29 U.S.C. § 431	3
Title IV, § 401, 29 U.S.C. § 481	1
Title IV, § 402, 29 U.S.C. § 482	1, 2
Title IV, § 403, 29 U.S.C. § 483	1, 8
Title V, § 501, 29 U.S.C. § 501	6

National Labor Relations Act:

§ 10(1), 29 U.S.C. § 160(1)	11
-----------------------------------	----

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent

and

MIKE TRBOVICH (Proposed Intervenor), *Petitioner*

v.

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent

On Petition For Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT, UNITED MINE WORKERS OF
AMERICA IN OPPOSITION

STATUTORY PROVISIONS

As petitioner has failed to set out verbatim the statutory provisions involved, respondent has annexed hereto, as an Appendix, §§ 401, 402, and 403 of the Landrum-Griffin Act, 29 U.S.C. §§ 481, 482, and 483.

QUESTION PRESENTED FOR REVIEW

May a non-candidate union member who subsequently becomes chairman of a union political party intervene on behalf of himself and other members as a party-plaintiff in a post-election action brought by the Secretary of Labor to set aside a union election pursuant to Title IV, section 402 of the Landrum-Griffin Act [29 U.S.C. § 482(b)], for the purpose of amending the complaint to include two additional grounds for setting aside the election, both previously rejected by the Secretary.

STATEMENT OF THE CASE

On December 9, 1969, over 1200 local unions chartered by the United Mine Workers of America, conducted their election of International Officers.¹ It was conducted by duly elected officers in each local union through the medium of a secret ballot. The official report of the International Tellers showed that the incumbent, W. A. Boyle, had defeated Joseph Yablonski by almost a two-to-one majority.²

It is regrettable that petitioner's statement is replete with factual assertions, 99 percent of which have never been proven in a court of law.³

¹ Although an International President, Vice President and Secretary-Treasurer, as well as Auditors and Tellers were elected, petitioner apparently contests only the election of the International President.

² The official tally showed that W. A. "Tony" Boyle received 80,577 votes, and Joseph "Jock" Yablonski received 46,073.

³ The Secretary of Labor's action to set aside the International election of the United Mine Workers of America is set for trial on September 13, 1971 (Civil Action No. 662-70, D.D.C.).

On April 1, 1970, petitioner was allegedly elected chairman of a dissident faction within the United Mine Workers of America. On October 2, 1970, approximately seven months after the Secretary of Labor's complaint had been filed, petitioner moved to intervene on behalf of himself and as chairman of Miners for Democracy. This complaint sought to raise two additional issues. The first was that a pension increase by the trustees of the United Mine Workers of America Welfare and Retirement Fund, on June 23, 1969, constituted improper interference in the election campaign. The second issue alleged that approximately 500 local unions were illegally constituted and should be disbanded before a court-ordered election is held. With respect to Count II of the complaint, petitioner sought to raise a different cause of action under section 201 of the Act (29 U.S.C. § 431). He also prayed for the appointment of monitors.

The Honorable George P. Shultz, in testifying before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, on May 4, 1970, delineated his views with respect to these matters. Petitioner is highly critical of the Secretary's failure to utilize his investigative powers immediately prior to the conduct of the election. They assert that their pre-election complaints to him form the backbone of his suit to set aside the election. Yet, Mr. Shultz has noted that, "I think it is fair to say that the basic thrust of the appeals that were made to the Department of Labor by and on behalf of Mr. Yablonski were that we give him assistance in his campaign."⁴ Pre-election allega-

⁴ Statement of the Honorable George P. Shultz before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, on May 4, 1970, p. 8.

tions by Mr. Yablonski of violence to himself and his supporters were investigated by either the Department of Labor or the Department of Justice and failed to disclose a proper basis.

In rejecting petitioner's thesis that the Secretary should have assisted Mr. Yablonski in his campaign, Mr. Shultz replied,

... Requests to identify wrongdoers during a campaign are received by the Department of Labor in many keenly contested elections. The cry of "Throw the rascals out" is heard in union as well as other elections and I do not believe that the Department of Labor should use its authority to publicize as a means of identifying who the rascals are. Rascals should be identified either by due-process proceedings in the courts or by the rough and tumble of politics—not by press releases issued by the Department of Labor and subject to no review in the courts.⁵

Before examining the two additional issues which petitioner seeks to interject in this case, it should be noted that the wisdom of Secretary Shultz was exemplified when he testified that,

... if everything a union officer does is, as it may benefit or not benefit the members, constitutes a violation of this Act, and then you would be immobilizing him for the period of the election campaign at least, so he could not go and negotiate a new contract somewhere or do anything, that is not the intent of the Congress, that is for certain.⁶

On June 23, 1969, the union and employer trustees of the United Mine Workers of America Welfare and

⁵ *Id.* at 5.

⁶ *Id.*, transcript of hearings, p. 696.

Retirement Fund increased the pensions of beneficiaries from \$115 to \$150 per month. The Secretary of Labor has investigated the matter and found that the pension increase was not improper interference by the union in the election.⁷ Rejecting the Exchange Parts Doctrine developed under the National Labor Relations Act in *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964), as not being applicable to the instant case, the Secretary pointed out the falseness of the analogy and its dangers.⁸

It is significant that, although the pension increase was the subject of litigation in *Blankenship, et al. v. W. A. Boyle, et al.*, Civil No. 2186-69, D.D.C., no one, including any court, has suggested or even intimated that there should be a rollback of the pension increase. Even Senator Harrison Williams' auditors failed to appreciate that this industry-wide irrevocable trust was supposed to operate on a pay-as-you-go basis. This trust was created for the benefit of coal miners and was never intended to accumulate money for its own sake. Financed by royalties on coal produced for use or for sale as a result of a collective bargaining agreement, there is not a shred of evidence to support the contention that the trust will become bankrupt by 1975.

The second issue involved petitioner's coined phrase, "bogus locals." The Secretary of Labor, upon investigation, has found that the interpretation of the United Mine Workers of America of its constitution is reasonable.⁹ He has further found that the issue of "bogus locals" could not possibly have affected the

⁷ *Id.*, statement of Secretary of Labor George P. Shultz, p. 13.

⁸ *Id.*, at 14-15.

⁹ *Id.* at 17.

outcome of the election, as pensioned union members would still have had the right to vote. This issue is not new. It has previously been raised by petitioner's counsel in *Yablonski, et al. v. United Mine Workers of America*, Civil No. 3436-69, D.D.C.; *sub nom Karl Kafton, et al. (including Mike Trbovich) v. United Mine Workers of America*.

It is true that in the pre-election period Mr. Yablonski filed a number of lawsuits concerning the election. In his initial suit he sought the right to distribute campaign literature prior to becoming a candidate within the meaning of the Union Constitution. The Union unsuccessfully opposed his complaint, on the basis that the only federal court decision on the point required the individual to be a candidate within the meaning of that term as used in the Union Constitution. The United States District Court for the District of Columbia held otherwise.

A second suit challenged the U.M.W. Journal and its editor. Subsequently, the Court determined that during the period of the general election, that is, from August 15 through December 9, 1969, the Journal had not been improperly used as a campaign instrument.

In a third suit Mr. Yablonski sought to have the election conducted by the Honest Ballot Association, rather than the duly-elected officers of the local unions throughout the country. His contention was rejected by the Court.

On the eve of election, Mr. Yablonski filed an action pursuant to 29 U.S.C. § 501, charging the incumbent officers with having "surrendered \$9,000,000 of U.M.W.A. assets unjustified by any claim of union benefit." Utilized as campaign propaganda, there was

insufficient time to respond to Mr. Yablonski's charges. The suit has not yet come to trial.

The basic issue is whether or not the Secretary of Labor has discretion in the prosecution of litigation to set aside a union election. Once having filed a suit, which by statute is exclusively within his province, should he be permitted in the public interest to conduct the litigation in his own way; or, on the other hand, should any person affected thereby have the right to participate in the trial of the cause? The District Court ruled that the remedy and the conduct of the remedy were exclusively within the province of the Secretary of Labor. The United States Court of Appeals for the District of Columbia Circuit affirmed.¹⁰

ARGUMENT

As a preliminary matter, it is to be noted that petitioner has fallen into the familiar error of failing to specify with particularity what considerations warrant the exercise of this Court's discretionary power to review the decision of the Court of Appeals. There is no claim of substantial conflict with any decision of either this Court or other circuit courts of appeal. Petitioner notes that in *Stein v. Wirtz*, 366 F. 2d 188 (10th Cir., 1966) certiorari was denied, 386 U.S. 996, where a union member's motion to intervene for the purpose of continuing the prosecution of a Title IV post-election case was denied. There, the prosecution had entered into a stipulation of settlement and the union member disagreed.

¹⁰ Petitioner suggests that, because time was of the essence, the Court of Appeals contented itself with a brief *per curiam* decision. There is no basis for this suggestion.

I.

Enforcement of Post-Election Remedy to Challenge a Union Election Is Statutorily the Exclusive Function of the Secretary of Labor.

The legislative history of the Act clearly demonstrates that the manner of enforcing a post-election remedy was the subject of much discussion. At conference, the final Senate version was accepted, placing enforcement in the hands of the Secretary of Labor. Nothing could be clearer than the wording of that portion of § 403 of Title IV of the Act, 29 U.S.C. § 483, which provides:

The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

The instant case presents a classic situation where petitioner disagrees with the conduct of the prosecution of a post-election complaint by the Secretary of Labor. The Secretary's testimony before the Senate Subcommittee on Labor manifests his investigation and discretionary determination as to what issues would be relied upon in the prosecution of litigation to set aside the union election. He rejected the two issues which petitioner seeks to incorporate in the trial of that cause.

In order to best serve the public interest Congress decided to utilize the special knowledge and discretion of the Secretary of Labor as the exclusive method for protecting Title IV rights. *Calhoon v. Harvey*, 379 U.S. 134 at 140 (1964). This Court has noted that, "Congress emphatically gave unions the primary responsibility for enforcing compliance with the Act, Congress also settled enforcement authority on the Secretary of Labor to insure that serious violations would

not go unremedied and the public interest go unvindicated." *Wirtz v. Hotel, Motel, and Club Employees' Union, Local 6*, 391 U.S. 492 at 498, 499 (1968).

To permit a political faction to intervene as a party-plaintiff would turn the trial of the cause into a political forum, rather than the dispassionate consideration of the merits of the controversy.

II.

Interpretation of Title IV Post-Election Remedies by Federal Courts.

Litigation in Title IV post-election remedies has fallen into two categories: motions to intervene in suits brought by the Secretary of Labor; and individual suits instituted by union members, the latter involving individual actions attacking the validity of elections and actions against the Secretary of Labor in the nature of mandamus.

In addition to *Stein v. Wirtz, supra*, the Second Circuit in *Wirtz v. National Maritime Union of America*, 409 F. 2d 1340 (1969), affirmed the denial of a motion filed by certain union members to overrule the Secretary of Labor with respect to certain rules he had formulated to govern a new election. The Secretary had successfully set aside the union's prior election. Relying on *Calhoon v. Harvey, supra*, and noting the exclusive rights granted to the Secretary of Labor for post-election remedies, the Court held that, although appellant's motion dealt with a second election, it did not justify a different result.

All district courts have denied motions to intervene in actions brought by the Secretary of Labor to invalidate elections. *Shultz v. Steelworkers*, 313 F. Supp.

549, 74 L.R.R.M. 2222 (W.D. Pa., 1970); *Wirtz v. Local Union No. 1377, International Brotherhood of Electrical Workers*, 288 F. Supp. 914 (N.D. Ohio, 1968); *Wirtz v. Operating Engineers*, 66 L.R.R.M. 2080 (C.D. Calif., 1967); *Wirtz v. Local 825*, 60 L.R.R.M. 2092 (D. N.J., 1965); *Wirtz v. Local 560, Teamsters*, 61 L.R.R.M. 2470 (D. N.J., 1965). In the above cited *Steelworkers* case, applicant for intervention was the complainant to the Secretary of Labor.

In the second category of cases, the courts have denied suits by individuals questioning the validity of already-conducted union elections, as well as suits to compel the Secretary to bring a Title IV post-election action. *Wirtz v. Local Union 410, et al., International Union of Operating Engineers*, 366 F. 2d 438 (2nd Cir., 1966); *Mamula v. United Steelworkers of America*, 304 F. 2d 108 (3rd Cir., 1962); *McGuire v. Locomotive Engineers*, 426 F. 2d 504 (6th Cir., 1970); *Katrinic v. Wirtz*, 62 L.R.R.M. 2557 (D.D.C., 1966); *Ravaschieri v. Schultz*, 75 L.R.R.M. 2272 (S.D. N.Y., 1970); *Morrissey v. Shultz*, 311 F. Supp. 744, 74 L.R.R.M. 2679 (S.D. N.Y., 1970); *DeVito v. Shultz*, 300 F. Supp. 381 (D. D.C., 1969).

III.

Petitioner's Reliance on Cases Involving Other Statutes Is Misplaced.

Neither *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967), nor *International Union of United Automobile Workers, AFL-CIO Local 283 v. Scofield*, 382 U.S. 205 (1965), stated by petitioner are in point. In both cases, the intervenor had a judicially cognizable interest. *Scofield* held that the successful party in an unfair labor practice proceeding before the NLRB had a right to intervene when the Court of Appeals reviewed the

Board's order. As stated by the District Court in the instant case, the main rationale of the decision was the desirability of avoiding multiple appeals. Unlike *Scotfield*, petitioner herein has never had standing in this judicial proceeding.

Both the National Labor Relations Act and the Landrum-Griffin Act set forth a systematic scheme for the prosecution of remedies. Thus, a charging party is without standing to apply to the Circuit Court of Appeals to have an employer judged guilty of contempt in disobeying the Court's decree enforcing the Board's order. *Amalgamated Utility Workers v. Consolidated Edison Co. of New York, Inc.*, 309 U.S. 261 (1940). While under the National Labor Relations Act a charging party may aid the Regional Director in the course of an application for a preliminary injunction pursuant to Section 10(1) of the Act, he may not initiate an appeal which the Regional Director declined to take, "for then the charging party would become the principal complainant, in defiance of the scheme of the Act," *Sears, Roebuck and Co. v. Carpet, Etc., Local Union No. 419*, 410 F. 2d 1148 (10th Cir., 1969). In that case, the Court held *Scotfield* not to be in point.

The statutory scheme of the Landrum-Griffin Act vests post-election remedies within the exclusive domain of the Secretary of Labor. To permit petitioner herein to introduce additional issues is to substitute the intervenor for the principal complainant. It would effectively destroy the Secretary's discretion as to the manner of prosecuting the litigation and vest it in a number of intervenors, all claiming they would be affected by the ultimate decision. This is not what Congress intended.

CONCLUSION

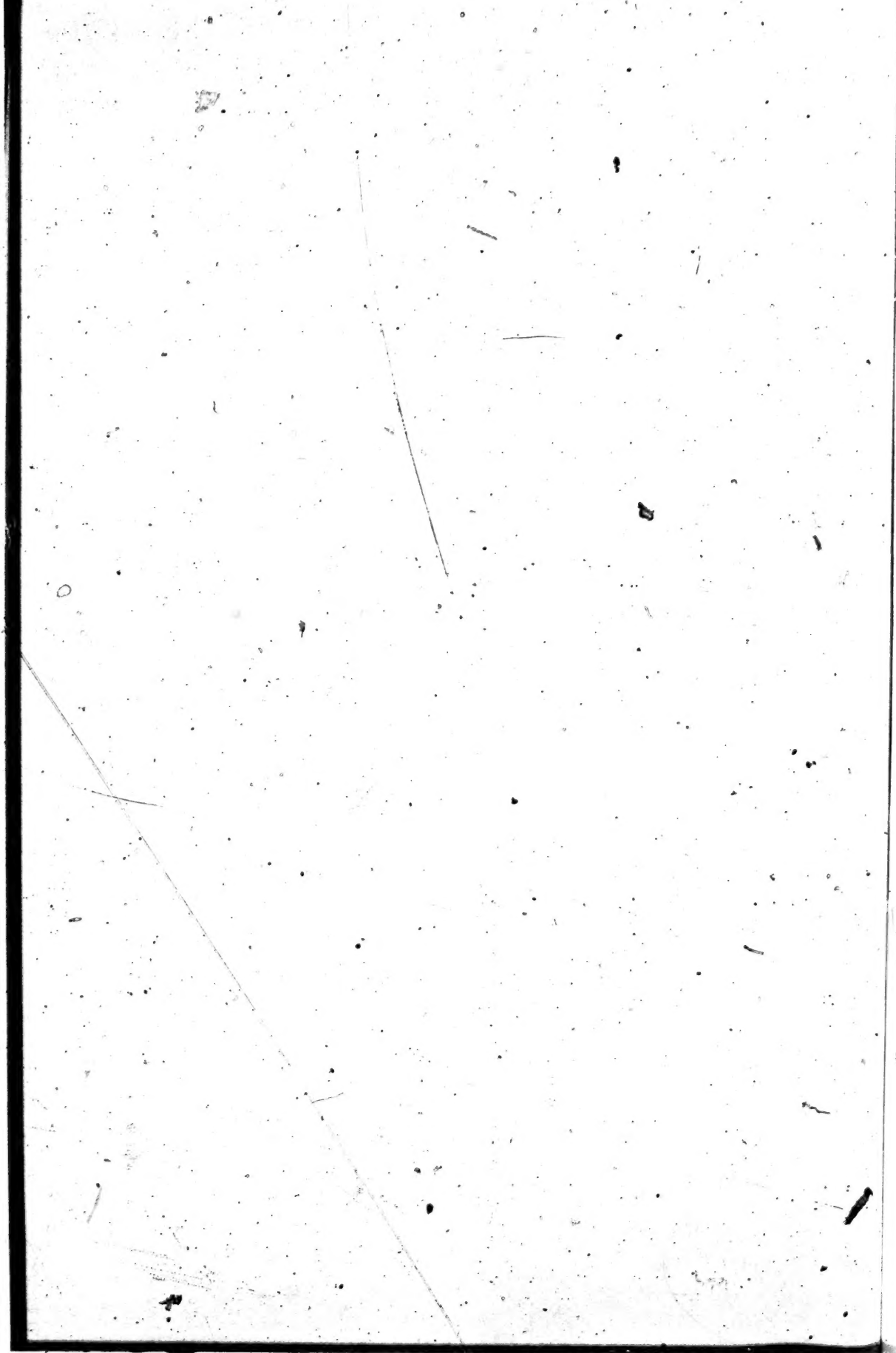
For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

EDWARD L. CAREY,
HARRISON COMBS,
WILLARD P. OWENS,
CHARLES L. WIDMAN,
WALTER E. GILLCRIST,
Counsel for Respondent,
United Mine Workers of America

900 Fifteenth Street, N. W.
Washington, D. C. 20005

APPENDIX



APPENDIX

SUBCHAPTER V.—ELECTIONS

§ 481. Terms of Office and Election Procedures—Officers of National or International Labor Organizations; Manner of Election

(a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years, either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

Officers of local labor organizations; manner of election

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

Requests for distribution of campaign literature; civil action for enforcement; jurisdiction; inspection of membership lists; adequate safeguards to insure fair election

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign litera-

ture on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

Officers of intermediate bodies; manner of election

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of results; preservation of ballots and records

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind

by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

Election of officers by convention of delegates; manner of conducting convention; preservation of records

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

Use of dues, assessments or similar levies, and funds of employer for promotion of candidacy of person

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the

provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

Removal of officers guilty of serious misconduct

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

Rules and regulations for determining adequacy of removal procedures

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h) of this section. Pub.L. 86-257, Title IV, § 401, Sept. 14, 1959, 73 Stat. 532.

§ 482. Enforcement—Filing of Complaint; Presumption of Validity of Challenged Election

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

Review of orders; stay of order directing election

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal. Pub. L. 86-257, Title IV, § 402, Sept. 14, 1959, 73 Stat. 534.

§ 483. Application of Other Laws; Existing Rights and Remedies; Exclusiveness of Remedy for Challenging Election

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive. Pub. L. 86-257, Title IV, § 403, Sept. 14, 1959, 73 Stat. 534.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent,
and
MIKE TRBOVICH (Proposed Intervenor), *Petitioner,*
v.
UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent.

REPLY BRIEF FOR PETITIONER

JOSEPH L. RAUH, JR.
JOHN SILARD
ELLIOTT C. LICHTMAN
1001 Connecticut Ave., N. W.
Washington, D. C. 20036

JOSEPH A. YABLONSKI
CLARICE R. FELDMAN
1812 N Street, N. W.
Washington, D. C. 20036

Of Counsel:

CLYDE W. SUMMERS
Wall and High Streets
New Haven, Connecticut

AUTHORITIES CITED

CASES:

	Page
<i>Blankenship v. Boyle</i> , 77 LRRM 2140 (D.D.C., 1971) ..	2, 7
<i>Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.</i> , 386 U.S. 129 (1967)	3
<i>Citizens to Preserve Overton Park v. Volpe</i> , 91 S.Ct. 814 (1971)	5
<i>DeVito v. Shultz</i> , 300 F.Supp. 381 (D.D.C., 1969)	5
<i>Hodgson v. Steelworkers, Local 6749</i> , 91 S.Ct. 1841 (1971)	6
<i>International Union, UAW v. Scofield</i> , 382 U.S. 205 (1965)	4, 5
<i>Schonfeld v. Wirtz</i> , 258 F.Supp. 705 (SDNY, 1966)	5
<i>Semancik v. Budzanoski</i> , 324 F.Supp. 1292 (WD Pa., 1971)	7
<i>Stein v. Wirtz</i> , 366 F.2d 188 (CA 10, 1966), cert. denied, 386 U.S. 996	2, 3
<i>Yablonski v. UMWA</i> , 305 F.Supp. 868 (D.D.C., 1969) ..	7
<i>Yablonski v. UMWA</i> , 71 LRRM 2606 (D.D.C., 1969) ..	7
<i>Yablonski v. UMWA</i> , 71 LRRM 3041 (D.D.C., 1969) ..	7
<i>Yablonski v. UMWA</i> , 71 LRRM 2687 (D.D.C., 1969) ..	7
<i>Yablonski v. UMWA</i> , 77 LRRM 2921 (CADC, 1971) ..	7

STATUTES:

<i>Federal Rules of Civil Procedure</i> , Rule 24	2
<i>Labor-Management Reporting and Disclosure Act of 1959</i> , 29 U.S.C. 401, et seq.	
Section 402 (29 U.S.C. 482)	5, 6
Section 403 (29 U.S.C. 483)	1
Section 606 (29 U.S.C. 526)	4
<i>Administrative Procedure Act</i> , 5 U.S.C. 551, et seq.	
Section 2(d) (5 U.S.C. 551(6) and (7))	5
Section 10(e) (5 U.S.C. 706)	5

MISCELLANEOUS:

104 Cong. Rec. 10999, June 12, 1958	3
---	---

IN THE
Supreme Court of the United States
OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent,
and
MIKE TRBOVICH (Proposed Intervenor), *Petitioner,*
v.
UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent.

REPLY BRIEF FOR PETITIONER

1. While LMRDA provides that the exclusive remedy for challenging union elections is a suit *initiated* by the Secretary of Labor, Section 403 29 USC 483, it does not speak of *intervention*. As indicated in the petition for certiorari, pp. 21-29, Congress placed exclusive authority to *initiate* suit in the Secretary so as to avoid piecemeal litigation and undue disruption of union affairs, evils which would not result from allowance of

intervention by union members satisfying the ordinary conditions of Rule 24, FRCP. As indicated in the petition, p. 21-22, and the *amicus curiae* brief in support thereof, p. 5, intervention and initiation of suit are fundamentally distinct notions, and rights of initiation and intervention, in numerous cases, are not co-extensive.¹

2. The Secretary's response incorrectly suggests that *Stein v. Wirtz*, 366 F.2d 188 (CA 10, 1966), *cert. denied*, 386 U.S. 996, was decided under the liberalized Rule 24, effective July 1, 1966. While the court of appeals decision post-dated the effective date of the amendment, the motion for intervention was made in December 1965 and rejected in the district court prior to the effective date. It is apparent that the case was decided under the old rule. See *Cascade Natural Gas*

¹ The Secretary's Brief in Opposition evidences the dangers inherent in a legal action without one of the principal interested groups a party to the action. For example, footnote 3 on page 5 indicates a lack of understanding of the reform group's position and a total acceptance of the Union's position. With respect to the continued maintenance of the bogus local unions, the Secretary refers to the fact that the "International Union has consistently interpreted the constitutional provision" as not requiring a local union to disband if it has fewer than 10 active members. But the Secretary here simply adopts an unsupported statement of the International Union without an independent evaluation of that interpretation or requiring the Union to justify its constitutional interpretation, or even to demonstrate that it has consistently interpreted the constitutional provision in this way. With respect to petitioner's charge concerning the pension increase, the Secretary refers to all of the Union's arguments without even mentioning Judge Gesell's ruling rejecting those arguments and removing Boyle as trustee on grounds of the pension increase. *Blankenship v. Boyle*, 77 LRRM 2140 (D.D.C., 1971). The spectacle of the Secretary and Boyle's counsel working out the decree for any new election without the countervailing pressure of the reform group hardly comports with the principle of equal justice under law.

Corp. v. El Paso Natural Gas Corp., 386 U.S. 129, 135-136 (1967). At any rate, the petition for certiorari in *Stein* was jurisdictionally out-of-time; hence, the substantiality of the questions presented could not have been considered.

3. Neither response contains even the germ of an answer to the clear legislative history set forth in the Petition, pp. 23-28, indicating—in the words of Senate sponsor John F. Kennedy—that Title IV of LMRDA “adds to and does not detract from the members’ rights,” 104 Cong. Rec. 10999, June 12, 1958, and was not meant to preclude intervention.

The Secretary’s response does, however, seek to discount the recent testimony of Senator Robert P. Griffin, one of the principal sponsors of LMRDA, before the Senate Labor Subcommittee. As indicated in the petition, Senator Griffin testified that he was aware of no congressional intent to preclude intervention. The Secretary dismisses the testimony as “a legislative afterthought” spoken “in the context of a highly charged political atmosphere. . . .” Senator Griffin spoke critically of the Labor Department’s implementation of LMRDA under Democratic and Republican administrations alike (p. 29 of Petition), hence, his views can hardly be discounted as “political”. Further, it should be noted that the occasion of Senator Griffin’s statement was fundamentally non-political. The Labor Subcommittee was simply performing its legitimate task of evaluating the Labor Department’s administration of LMRDA and considering the possible need for amendments. Certainly the view of a principal sponsor regarding the aims and intent of the enacting Congress was highly relevant to this task, and *equally* relevant to the issue at hand.

4. The Secretary now says he is "unaware of any . . . concession" that petitioner satisfies all conditions for intervention of right (p. 10, n. 9). But counsel for petitioner, who were present at the court of appeals argument, remain firm in their belief that such a concession was, in fact, made during the argument and, notably, the Secretary does not deny this. Petitioner can well understand that the Secretary may now wish not to be bound by the concession of his attorney who argued for him in the court of appeals, but that can hardly avoid the force of the concession. Moreover, as indicated in the Petition, petitioner fully satisfies all conditions for intervention of right.

5. Petitioner remains firm in his contention that the present case is closely analogous to *International Union, UAW v. Scofield*, 382 U.S. 205 (1965), where this Court held that the successful party before the National Labor Relations Board may intervene in court of appeals review proceedings. Respondent Secretary attempts to distinguish *Scofield* by asserting that his determination of probable cause under Section 402 of LMRDA is not an "adjudication" and hence, that petitioner cannot be regarded as a "successful party" in the sense of *Scofield*. But the case law developed under LMRDA and the Administrative Procedure Act do not support the Secretary's contention.² As defined by APA, an "adjudication" is any "agency process for the formulation of an order" and an "order" is any "final disposition, whether affirmative, negative, injunctive or declaratory in form, of an agency in a matter other

² Notably Section 606 of LMRDA provides that the APA shall be applicable to "any adjudication . . . pursuant to the provisions of this Act."

than rule making. . . .” 5 USC 551(6) and (7). The Secretary’s determination is an “order” reached through “adjudication” in the sense of the APA definitions. Contrary to the Secretary’s assertion of non-reviewability, it has been held that complaining parties under Section 402 “have a judicially enforceable right to demand that the Secretary exercise his discretionary authority in a manner consistent with the requirements of the Act and not arbitrarily or capriciously.” *DeVito v. Shultz*, 300 F. Supp. 381, 383 (D.D.C., 1969). The courts have exercised review of the Secretary’s determinations not to sue, precisely as provided in Section 10(e) of APA, 5 USC 706, *DeVito, supra*, *Schonfeld v. Wirtz*, 258 F. Supp. 705, 708 (SDNY, 1966). This very exercise of judicial review presupposes the adjudicatory character of the Secretary’s determination. Conversely, where the Secretary determines that the allegations presented by the complaining member have sufficient merit to constitute “probable cause”, and he brings suit, such as here, his determination is also adjudicatory in character and the complaining member then has interests analogous to those of the “successful party” before the NLRB and under *Scotfield* should be permitted to participate in subsequent judicial proceedings.³

³ The adjudicatory process is no doubt different in NLRB proceedings from that in Section 402 proceedings before the Secretary. But the APA contemplates both types of proceedings, namely, adjudications with agency trial type hearings and formal findings and conclusions which are entitled to enforcement if supported by substantial evidence, and those less formal agency proceedings which require a judicial trial *de novo*. The Secretary’s determination not to sue is no less an “order” within the meaning of APA than an NLRB decision, since both are subject to judicial review. See, *Citizens to Preserve Overton Park v. Volpe*, 91 S.Ct. 814, 820-1, 823 (1971).

Moreover, this Court's decision last Term in *Hodgson v. Steelworkers, Local 6749*, 91 S. Ct. 1841 (1971), holding that the Secretary may litigate only those alleged violations which were raised by the complaining member before his Union, expands and highlights the importance of the complaining member's role in the pre-litigation phase of a Section 402 suit. After *Hodgson*, the claims which the Secretary may raise are limited to those raised initially by the complaining member before his union, and brought by the complaining member to the Secretary's attention, and not other possible claims which the Secretary may discover in the course of his own investigation. Since the NLRB is not similarly limited to the allegations of charging parties, the complaining party before the Secretary has an even greater role than the charging party before the Board, and hence, even stronger standing to intervene in subsequent judicial proceedings.

6. The response of the United Mine Workers illustrates the degree to which the Union's attorneys are tied to the interests of the incumbent officers, and therefore, highlights the problems arising from the Secretary's deference to the Union's position, *supra*, n. 1. Respondent UMWA's brief contains particularly misleading comments regarding candidate Yablonski's pre-election suit to restrain use of the *UMW Journal* as a campaign instrument for the incumbent officers, *Yablonski v. UMWA*, No. 2413-69 (D.C.C., 1969), p. 6 of UMWA brief. Respondent UMWA fails to mention the District Court order of September 19, 1969, finding that the *Journal* had been used as a pro-Boyle propaganda instrument between the time Yablonski announced his candidacy (May 29) and the time he brought suit (August 26), and restraining further im-

proper use of the *Journal*, 305 F. Supp. 868 (D.D.C., 1969).

Respondent UMWA's remark that the petition is "replete with factual assertions 99 percent of which have never been proven in a court of law" is belied by findings made in *Yablonski v. UMWA*, 305 F. Supp. 868 (D.D.C., 1969); *Yablonski v. UMWA*, 71 LRRM 2606 (D.D.C., 1969); *Yablonski v. UMWA*, 71 LRRM 3041 (D.D.C., 1969); *Yablonski v. UMWA*, 72 LRRM 2687 (D.D.C. 1969); *Blankenship v. Boyle*, 77 LRRM 2140 (D.C.C., 1971); and *Semancik v. Budzanoski*, 324 F. Supp. 1292 (WD Pa, 1971). The statement is but further illustration of UMWA counsel's commitment to the parochial interests of Boyle, Titler, and Owens which tends seriously to undercut the reliability of the positions taken by the Union before the Secretary.⁴

The principle of equal justice under law cannot allow the Secretary of Labor and Boyle's lawyers to work out a decree for any new election without the countervailing pressure of the reform group.

⁴ The objectivity and independence of UMWA counsel has been under challenge in *Kafton, et al. v. UMWA, et al.*, Civil Action No. 3436-69 (D.D.C.), a suit by Union members against the individual Union officers for restitution of misappropriated funds. The Court of Appeals recently disqualified the UMWA's regular "outside counsel" from further representation of the Union in that case, on the ground that the firm's representation of the individual defendants prevented it from objectively and independently performing its responsibilities to the Union, 77 LRRM 2921 (CADC, 1971). Subsequently the UMWA general counsel—attorney for the UMWA here—entered an appearance on behalf of the Union. Plaintiffs immediately moved for his disqualification on the ground that he is even more intimately connected with the individual defendants than the outside firm previously disqualified by the Court of Appeals. The matter is now pending on plaintiffs' Petition for further relief to enforce the Court of Appeals' mandate.

CONCLUSION

For the reasons stated, the Petition should be granted and the decision of the Court of Appeals reversed.

Respectfully submitted,

JOSEPH L. RAUH, JR.

JOHN SILARD

ELLIOTT C. LICHTMAN

1001 Connecticut Ave., N. W.

Washington, D. C. 20036

JOSEPH A. YABLONSKI

CLARICE R. FELDMAN

1812 N Street, N. W.

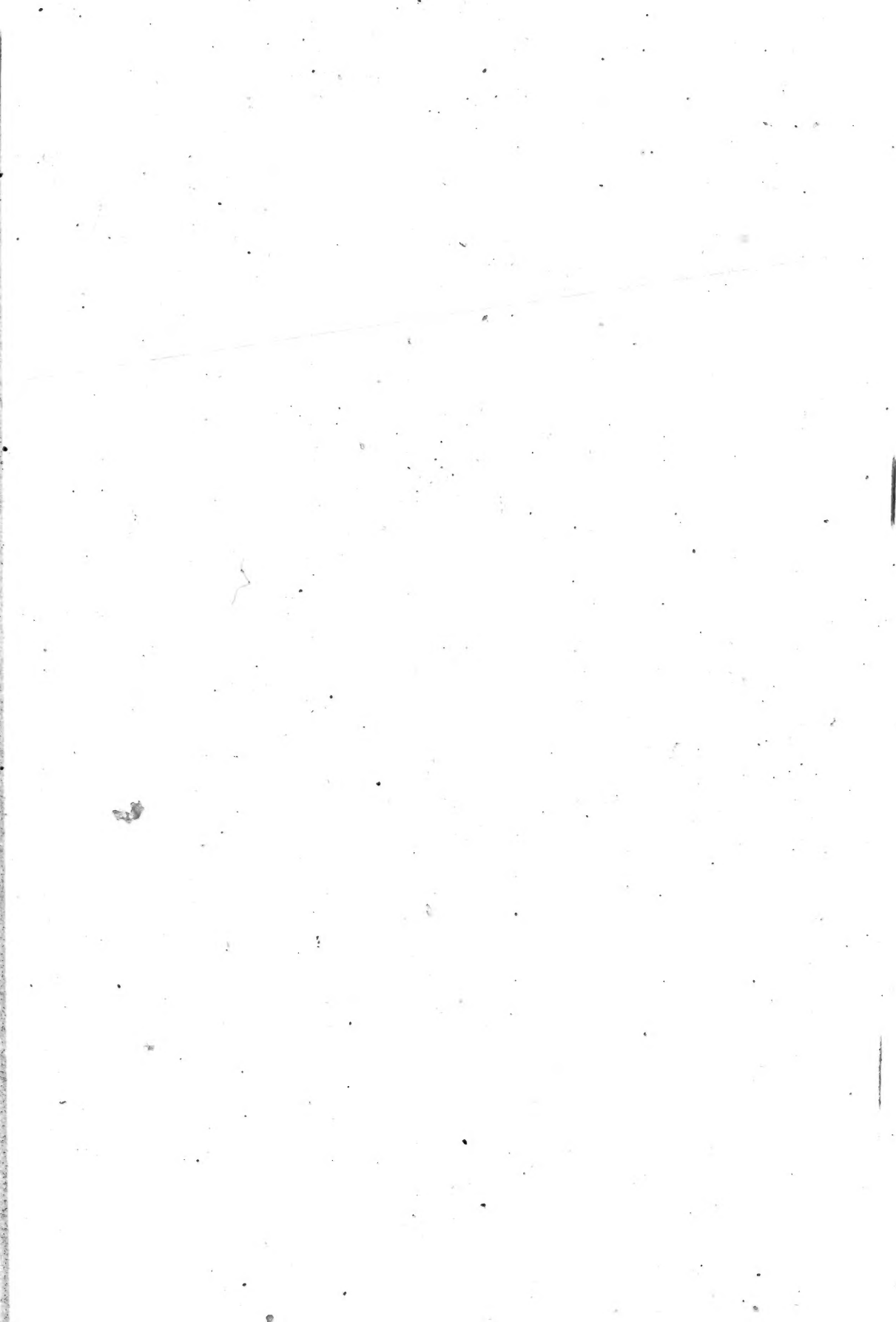
Washington, D. C. 20036

Of Counsel:

CLYDE W. SUMMERS

Wall and High Streets

New Haven, Connecticut



NOV 1 1971

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent,

—and—

MIKE TRBOVICH (Proposed Intervenor),
Petitioner,

—v.—

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent.

**MOTION FOR LEAVE TO FILE A BRIEF AND BRIEF
OF AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE**

MELVIN L. WULF
SANFORD JAY ROSEN
American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010
Attorneys for Amicus Curiae

INDEX

	PAGE
Motion for Leave to File Brief of American Civil Liberties Union as <i>Amicus Curiae</i>	1
Brief of American Civil Liberties Union, <i>Amicus Curiae</i>	5
Interest of <i>Amicus Curiae</i>	5
Question Presented	5
Statement of the Case	6
ARGUMENT	
I. The rule of <i>Calhoon v. Harvey</i> does not preclude intervention in the Secretary's suits to enforce Title IV	8
II. Title IV should be interpreted to allow intervention in appropriate cases, such as the present case	11
CONCLUSION	17

TABLE OF AUTHORITIES

Cases:

Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150	15
Calhoon v. Harvey, 379 U.S. 134	8, 9, 10
Cascade-National Gas Corp. v. El Paso Natural Gas Corp., 386 U.S. 129	12
Citizens to Preserve Overton Park v. Volpe, 91 S. Ct. 814 (1971)	9
Common Cause v. Democratic National Committee, D. Ct. D.C. Civ. Action 61-71 (1971)	15
De Vito v. Shultz, 300 F. Supp. 381 (D.D.C. 1966)	9
Formulabs, Inc. v. Hartley Pen Co., 318 F.2d 485 (9th Cir. 1963), cert. denied, 375 U.S. 945	11

	PAGE
Hodgson v. Steelworkers, Local 6749, 91 S. Ct. 1841	16
International Union, UAW v. Scofield, 382 U.S. 205	15, 16
Office of Communication, United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966)	15
Pennsylvania R.R. Co. v. Erie Avenue Warehouse Co., 302 F.2d 843 (3rd Cir. 1962)	11
Phelps v. Oaks, 117 U.S. 236	11
Schonfeld v. Wirtz, 258 F. Supp. 705 (S.D.N.Y. 1966)	9
Shultz v. United Steelworkers of America, 312 F. Supp. 538 (W.D. Pa. 1970)	10
Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463	16

Constitutional Provisions:

United States Constitution

Article III	14
Fifth Amendment	14

Rule:

FRCP, Rule 24	5, 7, 11, 12, 17
---------------	------------------

Statutes:

29 U.S.C. §431 (Labor-Management Reporting and Disclosure Act of 1959, Title II, §201)	7
29 U.S.C. §§482-483 (Labor-Management Reporting and Disclosure Act of 1959, Title IV, §§402-403)	5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17

Other Authorities:

Hart, <i>The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic</i> , 66 HARV. L. REV. 1362 (1953)	14
Shapiro, <i>Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators</i> , 81 HARV. L. REV. 721 (1967)	10, 11, 14

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,

Plaintiff-Respondent,

—and—

MIKE TRBOVICH (Proposed Intervenor),

Petitioner,

—v.—

UNITED MINE WORKERS OF AMERICA,

Defendant-Respondent.

**MOTION FOR LEAVE TO FILE BRIEF OF AMERICAN
CIVIL LIBERTIES UNION AS *AMICUS CURIAE***

It is hereby respectfully moved pursuant to Rule 42 of the Rules of this Court that the American Civil Liberties Union be granted leave to file the accompanying brief *amicus curiae* in support of the petitioner.

The *amicus curiae* filed a brief in support of the Petition for Writ of Certiorari. Letters of consent were filed with that brief from the petitioner and the respondent-plaintiff, the Secretary of Labor. By an oversight, consent was not requested from the respondent-defendant, United Mine Workers of America, and service was not made on counsel for the respondent-defendant. As soon as this oversight was noticed, counsel for the respondent-defendant was

served three copies of the *Brief in Support of the Petition for Writ of Certiorari* by first class airmail on October 27, 1971. On the same day counsel for the *amicus curiae* contacted counsel for respondent-defendant, apprised him of the oversight, and requested leave to file the attached brief in support of the petitioner on the merits. Consent was declined. Consent was granted on behalf of the petitioner and the respondent-plaintiff. These letters of consent have been filed with the Clerk.

The American Civil Liberties Union is a nation-wide non-partisan organization with approximately 160,000 members in the United States. It is engaged solely in the defense of those principles embodied in the Bill of Rights. During its fifty-year existence, the ACLU has been concerned with the special responsibility labor unions have to maintain democratic standards. In a membership organization, the freedom of election and balloting is the ultimate and most important freedom in the democratic conduct and control of the group. Hence, ACLU is especially concerned that the election provisions of the Labor-Management Reporting and Disclosure Act of 1959, Title IV, 29 U.S.C. §§482-483 are interpreted and administered in such a way as to most assure free and open union elections.

This case raises important questions concerning the ability of union members to intervene in lawsuits brought by the Secretary of Labor to enforce the provisions of Title IV. It concerns, therefore, proper judicial enforcement of the statutory guarantee of free and open union elections. It also involves compelling issues of fairness,

not unlike those of due process of law. The issues in this case go well beyond the interests of the direct parties to it. In the attached brief, therefore, *amicus curiae* presents argument to place the case in the broader context.

Respectfully submitted,

MELVIN L. WULF

SANFORD JAY ROSEN

American Civil Liberties Union

156 Fifth Avenue

New York, New York 10010

Attorneys for Movant.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent,

—and—

MIKE TRBOVICH (Proposed Intervenor),
Petitioner,

—v.—

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent.

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE**

Interest of *Amicus Curiae*

The interest of *amicus curiae* is set forth in the preceding motion.

Question Presented

Whether a member of a labor organization, who satisfies all conditions for intervention of right under Rule 24(a), FRCP, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary of Labor under the LMRDA, to set aside a union election.

Statement of the Case

This is one in a series of lawsuits brought or brought about by the petitioner and others as a part of a coordinated effort to reform and democratize one of the nation's largest labor unions, the United Mine Workers of America (hereinafter referred to as UMW). The history of this effort and of this lawsuit, is set out in some detail in the *Petition for Writ of Certiorari*, pp. 7-19. Suffice it to say, this Court is asked to reverse the decisions of the courts below denying the petitioner, Mike Trbovich, the right to intervene in the present lawsuit. This particular suit was brought by the Secretary of Labor, under Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as LMRDA), 29 U.S.C. Section 482(b), to set aside the UMW's December 9, 1969 election of International officers on grounds of massive election irregularities.

The petitioner was the campaign manager for the late Joseph A. "Jock" Yablonski, who unsuccessfully opposed the incumbent UMW president, W. A. "Tony" Boyle, in the December 9, 1969 election. Pursuant to Section 402(a) of the LMRDA, 29 U.S.C. Section 482(a), on December 18, 1969, Mr. Yablonski filed timely charges with the Secretary of Labor contesting the election on several grounds under Title IV of the LMRDA. After the murder of Mr. Yablonski, and his wife and daughter, in January 1970, the petitioner succeeded to the complaint. He filed a formal complaint on January 20, 1970. Presently, petitioner is National Chairman of the Miners for Democracy, a reform party within the UMW.

On March 5, 1970, after conducting his investigation of the December 9, 1969 election, the Secretary of Labor brought the present lawsuit, based upon petitioner's complaint, in the District Court for the District of Columbia. In his first cause of action he alleged violations of Title IV of the LMRDA. In his second cause of action, he alleged violations of record keeping and reporting requirements of Title II of the LMRDA.

On October 2, 1970, petitioner moved on behalf of himself and the Miners for Democracy, under Rule 24(a) of the Federal Rules of Civil Procedure, for leave to intervene as of right or, in the alternative, for permission to intervene under Rule 24(b).

Petitioner proposed additional allegations and claims for relief, all of which were encompassed within the complaint filed with the Secretary of Labor. The additional allegations related to political manipulation of the UMW Welfare and Retirement Fund, perpetuation of paper or "bogus" local unions, and the union's failure to provide and make available to its members adequate information about, and records of, its finances as required by Section 201 of the LMRDA, 29 U.S.C. Section 431. As additional claims for relief, the petitioner requested the District Court to require: (1) disbanding of the bogus locals; (2) installation of a Board of Monitors to oversee UMW financial affairs; (3) publication of a finding that the incumbent president breached his fiduciary duty to all members of the union by manipulating the Welfare and Retirement Fund for political advantage; (4) establishment of rules for conduct of a rerun election, or appointment of a panel, to be paid for out of UMW funds, to establish and enforce

fair rules for a rerun election; and (5) granting of proposed intervenor attorney fees and costs.

Intervention was denied by the District Court solely on the ground that by according the Secretary exclusive power to initiate suit under Title IV, Congress also precluded intervention by aggrieved union members in such suits as the Secretary decided to bring. In a *per curiam* order, the Court of Appeals for the District of Columbia affirmed the denial of intervention.

ARGUMENT

I.

The rule of *Calhoon v. Harvey* does not preclude intervention in the Secretary's suits to enforce Title IV.

This Court has held that suits falling "squarely within Title IV of the [LMRD] Act . . . are to be resolved by the administrative and judicial procedures set out in that Title." *Calhoon v. Harvey*, 379 U.S. 134, 141. With certain exceptions not relevant here, the statute

. . . sets up an exclusive method for protecting Title IV rights, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV. Upon complaint the Secretary investigates and if he finds probable cause to believe that Title IV has been violated, he may file suit in the appropriate district court. *Calhoon v. Harvey*, *supra*, 379 U.S. at 140.

According to this Court, Congress sought to accomplish three goals through Title IV's exclusive enforcement machinery. (1) Individuals should not be permitted "to block or delay union elections by filing federal-court suits for violation of Title IV." *Calhoon v. Harvey*, *supra* at 140. (2) "Reliance on the discretion of the Secretary is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies" *Calhoon v. Harvey*, *supra* at 140. (3) When unions fail to remedy election difficulties internally, Congress chose "to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion *before resort to the courts*." *Calhoon v. Harvey*, *supra* at 140-41. (Emphasis added.)

In *Calhoon*, however, the Court was concerned only with the exclusivity of the Title IV machinery, and the Secretary's control over enforcement, "*before resort to the courts*," *Calhoon v. Harvey*, *supra* at 140-41. (Emphasis added.) Once the Secretary files his suit, a binding determination has been made that the dispute is fit for judicial resolution, and the Secretary's exclusive control ends.* Different considerations govern the question of who may participate in the proceedings. As Professor Shapiro observed, just because Title IV vests in the Secretary exclusive authority to bring suit:

* Some courts have ruled that the Secretary's control is never absolutely exclusive, and that complaining parties under Section 402 "have a judicially enforceable right to demand that the Secretary exercise his discretionary authority in a manner consistent with the requirements of the Act and not arbitrarily or capriciously." *De Vito v. Shultz*, 300 F. Supp. 381, 383 (D.D.C. 1969); *Schonfeld v. Wirtz*, 258 F. Supp. 705, 708 (S.D.N.Y. 1966). See *Citizens to Preserve Overton Park v. Volpe*, 91 S. Ct. 814 (1971).

[I]t need not follow that the complainant who starts the machinery of the Secretary in motion may never intervene to protect his interest once a case is filed. That determination may well turn on a number of factors quite separate from his standing to sue, including the nature of his interest and the adequacy of the protection afforded that interest by existing parties. Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 HARV. L. REV. 721, 726-27 (1967).

See *Shultz v. United Steelworkers of America*, 312 F. Supp. 538, 539 (W.D. Pa. 1970), where a union officer whose election was challenged by the Secretary's suit was held to have sufficient interest to justify intervention "to protect his property interests"—presumably in his job.

None of the policy considerations discussed in *Calhoon* pertains once the Secretary has filed suit: (1) If any union election is blocked or delayed, it is because the Secretary has exercised his exclusive jurisdiction to bring suit. Intervention by interested parties will not change that fact. (2) Once the Secretary has filed suit, the time for "allow[ing] unions great latitude in resolving their own internal controversies . . . " (*Calhoon v. Harvey, supra* at 140) obviously has passed. (3) So has hope of "bringing about a settlement through discussion *before resort to the courts.*" *Calhoon v. Harvey, supra* at 140-41. (Emphasis added.) Further, the legislative history of Title IV amply supports an interpretation that allows intervention. See *Petition for Writ of Certiorari*, pp. 23-29.

II.

Title IV should be interpreted to allow intervention in appropriate cases, such as the present case.

Intervention is welcome, indeed invited, in federal civil practice. Thus it is not at all unusual for parties who are unable to bring suit to be empowered to intervene once suit is brought. For example, this Court has long held in diversity of jurisdiction cases that parties may intervene even though they would have destroyed federal court diversity jurisdiction if they had originally been parties. *Phelps v. Oaks*, 117 U.S. 236. See *Formulabs, Inc. v. Hartley Pen Co.*, 318 F.2d 485 (9th Cir. 1963), *cert. denied*, 375 U.S. 945; *Pennsylvania R.R. Co. v. Erie Avenue Warehouse Co.*, 302 F.2d 843, 845 (3rd Cir. 1962). According to Professor Shapiro:

[T]o decide whether a particular action may be brought by this plaintiff against this defendant may require a determination of whether the controversy is ripe for adjudication, whether the parties before the court are the real parties in interest, and whether the interests asserted are sufficient to mobilize the judicial machinery. When one seeks to intervene in an ongoing lawsuit, these basic questions have presumably been resolved; the disposition of the request, then, should focus on whether the prospective intervener has a sufficient stake in the outcome and enough to contribute to the resolution of the controversy to justify his inclusion. Shapiro, *supra*, 81 HARV. L. REV. at 726.

Intervention in civil actions in federal district court is governed by Rule 24 of the Federal Rules of Civil Proce-

ture. It was most recently revised in 1966, seven years after enactment of the LMRDA. According to this Court, "some elasticity was injected" in Rule 24 by the 1966 amendment. *Cascade-National Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129, 134. In other words, intervention is to be the rule, rather than the exception.

Rule 24(b) provides for permissive intervention by claimants in several broad categories. Most pertinent to this case, Rule 24(a) permits intervention as a matter of right:

. . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The petitioner satisfies all of the requisites of Rule 24(a). (1) As the leader of a minority party within the UMW, he claims a substantial interest in "the subject matter of the action." He is the present successor to Jock Yablonski, and "the subject matter of the action" is the legality of the December 9, 1969 UMW election in which Mr. Yablonski unsuccessfully sought the presidency of the Union. He challenges that election; that challenge is the crux of the lawsuit. (2) Unquestionably, "disposition of the action" will "impair or impede" the petitioner's "ability to protect that interest." Since the Secretary has "exclusive" control over the decision to bring a lawsuit to enforce Title IV, to all intents and purposes, "disposition of the action" will result in final adjudication of the petitioner's

interest. (3) The petitioner's "interest is [not] adequately represented by the existing parties." The UMW is an adverse party. And there is not merely a "difference of opinion concerning the best method of handling the litigation" between petitioner and the Secretary. *Brief of the Secretary of Labor in Opposition to the Petition for Writ of Certiorari*, p. 11. The petitioner differs fundamentally about whether certain of the Union's actions are unlawful, and as to appropriate remedy. In fact, the Secretary has declined to allege three violations of the statute, or to request several items of relief that the petitioner considers crucial to full adjudication of his interest and the cause of action.

Thus the Secretary's contention that the petitioner fails to meet the requisites for intervention as of right is unavailing. Equally unavailing is the Secretary's anxiety that if the petitioner may intervene "the trial itself would inevitably be delayed and protracted by the additional issues which petitioner seeks to interject." *Brief of the Secretary of Labor in Opposition*, p. 13. Some inconvenience always results from adding parties to litigation; that is the price of ever allowing intervention. This is a small price for the vindication of a real party's substantial interest. Further, this Court is not called upon in the present appeal to pass upon all of the issues involved in intervention.

When one is granted intervention, either as of right or in the exercise of discretion, it does not necessarily follow that he must be granted all the rights of a party at the trial and appellate levels, including full rights of discovery and cross-examination, the ability to veto a settlement of the case, and the right to appeal from a final decision. It is both feasible and desirable

to break down the concept of intervention into a number of litigation rights and to conclude that a given person has one or some of these rights but not all. Shapiro, *supra*, 81 HARV. L. REV. at 727 (footnotes omitted).

Resolution of these additional issues should await the making of a trial record.

In cases like the present one, denial of the right to intervene offends a healthy sense of fairness, and may raise serious constitutional questions under the due process clause of the Fifth Amendment and Article III. Cf. Shapiro, *supra*, 81 HARV. L. REV. at 726; Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362 (1953).

Affirmative steps taken by the petitioner were jurisdictional requisites to the Secretary's cause of action. Section 402, LMRDA, 29 U.S.C. §482. The interest being sued upon is that of the petitioner, and those he represents, not that of the Secretary. The petitioner and those he represents will feel the burden or gain the benefit of any resolution of this lawsuit, not the Secretary. The petitioner and those he represents are the experts about the UMW and its election processes (*Petition for Writ of Certiorari*, pp. 9-17, 35-37), not the Secretary. If the petitioner is foreclosed from intervening, his "private" interest is forever submerged and lost in the "public" interest. This lawsuit will conclude the election dispute and either vindicate or extinguish petitioner's interest. With the federal courts increasingly enabling private parties to act as "private attorneys general" to enforce laws securing the public interest it seems strange indeed to preclude interested private par-

ties, like the petitioner, from intervening in public lawsuits designed more to secure their interests than to secure those of the public. See, e.g., *Common Cause v. Democratic National Committee*, D. Ct. D.C. Civ. Action 61-71 (1971); *Office of Communication, United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966); see also, *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150.

A compelling precedent in a closely analogous area supports the right to intervene in Title IV actions. In *International Union, UAW v. Scofield*, 382 U.S. 205, this Court decided that parties who are successful in unfair labor practice proceedings before the National Labor Relations Board have a right to intervene in Court of Appeals review proceedings. A basis for the Court's decision was the desire to conserve judicial energy, for under the NLRA, the charging party might bring a second appeal if the Board's decision were reversed. 382 U.S. at 212. Nevertheless, the principle of *Scofield* is applicable to Title IV actions, as is much of the Court's analysis. Just as under Title IV of the LMRDA, the scheme of the National Labor Relations Act (hereinafter NLRA) places in the Board and its General Counsel exclusive power over enforcement of the statute and prosecution of violations. Just as under Title IV, the NLRA is silent with respect to the right of a private party, who is successful in the administrative process, to intervene in judicial review proceedings. Just as under Title IV, in the NLRA, public and private interests are "interblend[ed] in the intricate statutory scheme." *International Union, UAW v. Scofield*, *supra*, 382 U.S. at 220. Yet in *Scofield*, the Court held in favor of intervention, declaring: "To employ the rhetoric of 'public inter-

est,' however, is not to imply that the public right excludes recognition of parochial private interests." 382 U.S. at 218.

Although the enforcement machinery established in Title IV is exclusive, the provisions for enforcement are to be construed generously, to assure vindication of "the interests protected by §401." (These interests are both public and private.) *Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 475. Hence this Court has held that an intervening union election does not moot a suit brought by the Secretary to challenge a prior election (*Wirtz v. Local 153, supra*), and the Secretary's cause of action under the statute is not limited solely to the allegations made in the union member's complaint to the union and to the Secretary, but may extend to matters of which the union had constructive notice and opportunity to cure (*Wirtz v. Local 125, Laborers' Int'l Union*, 389 U.S. 477). Last Term in *Hodgson v. Steelworkers, Local 6749*, 91 S. Ct. 1841, the Court held that the Secretary may litigate only those alleged violations which were raised by the complaining member before his union. The claims which the Secretary may raise are limited to those raised initially by the complaining member before his union, and brought to the Secretary's attention by the complaining member, and not other possible claims which the Secretary may discover in the course of his own investigation. Thus the Court has, in effect, recognized the "private" interest and not merely the general "public" interest to be enforced under Title IV.

The controlling precedents of this Court, therefore, lead to the conclusion that when a union member-complainant can expand upon the Secretary's district court complaint

(without going beyond the charges filed with the Union and the Secretary) and thereby assure complete vindication of all the interests protected by Title IV (see *Petition for Writ of Certiorari*, pp. 35-37), he should be allowed to intervene in the Secretary's suit in a manner consistent with Rule 24 of the Federal Rules of Civil Procedure. This analysis is fully confirmed by the legislative history of Title IV. See *Petition for Writ of Certiorari*, pp. 23-29.

CONCLUSION

For the reasons set forth in this brief, the Court should reverse the judgments of the courts below.

Respectfully submitted,

MELVIN L. WULF

SANFORD JAY ROSEN

American Civil Liberties Union

156 Fifth Avenue

New York, New York 10010

Attorneys for Amicus Curiae

November 1, 1971

12



IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

MIKE TRBOVICH, *Petitioner*

V.

UNITED MINE WORKERS OF AMERICA, ET AL.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONER

JOSEPH L. RAUH, JR.

JOHN SILARD

ELLIOTT C. LICHTMAN

1001 Connecticut Ave., N.W.

Washington, D. C. 20036

JOSEPH A. YABLONSKI

CLARICE R. FELDMAN

1812 N Street, N.W.

Washington, D. C. 20036

Of Counsel:

CLYDE W. SUMMERS

Wall and High Streets

New Haven, Connecticut

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
ISSUE PRESENTED	2
RELEVANT STATUTES	2
STATEMENT	8
ARGUMENT	22
1. Allowance of Intervention by a union member who concededly meets the standards of Rule 24(a) is not expressly forbidden by the relevant statutory provisions, and, considered in conjunction with this Court's prior decisions construing LMRDA, is necessary for full protection of Title IV rights ...	22
2. Intervention is not precluded by Section 403 of the Act	25
3. Intervention by union members whose interests are not adequately represented by the Secretary is necessary to the protection of their rights under Section 401 of the Act and to realization of the congressional purpose of assuring fair and honest union elections	34
CONCLUSION	44

AUTHORITIES CITED

CASES:

<i>Blankenship v. Boyle</i> , 329 F. Supp. 1089 (D.D.C., 1971)	12, 13, 14, 15, 44
<i>Blankenship v. Boyle</i> , 77 LRRM 2931 (C.A.D.C., 1971)	14
<i>Calhoun v. Harvey</i> , 379 U.S. 134 (1964)	23, 24
<i>Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.</i> , 386 U.S. 129 (1967)	22, 35, 36, 43
<i>Citizens to Preserve Overton Park, Inc. v. Volpe</i> , 401 U.S. 402 (1971)	38

	Page
<i>DeVito v. Shultz</i> , 300 F. Supp. 381 (D.D.C., 1969)	38
<i>Hodgson v. Steelworkers, Local 6799</i> , 403 U.S. 333 (1971)	24, 25, 40
<i>Hodgson v. UMWA</i> , 51 F.R.D. 270 (D.D.C., 1970), aff'd, 77 LRRM 2496 (C.A.D.C., 1970)	1
<i>Hodgson v. UMWA</i> , 77 LRRM 2332 (D.D.C., 1971) ..	19
<i>International Union, UAW v. Scofield</i> , 382 U.S. 205 (1965)	36, 37, 38, 39, 40, 41, 42, 44
<i>Local 57 v. Wirtz</i> , 346 F. 2d 552 (C.A. 1, 1965)	9
<i>NLRB v. Exchange Parts</i> , 375 U.S. 405 (1964)	16
<i>Phelps v. Oaks</i> , 117 U.S. 236 (1886)	26
<i>Sam Fox Publishing Co. v. United States</i> , 366 U.S. 683 (1961)	35
<i>Schonfeld v. Wirtz</i> , 258 F. Supp. 705 (S.D.N.Y., 1966) ..	38
<i>Semancik v. Budzanoski</i> , 324 F. Supp. 1292 (W.D. Pa., 1971)	18
<i>Shultz v. United Steelworkers of America</i> , 312 F. Supp. 538 (W.D. Pa., 1970)	41
<i>Spangler v. United States</i> , 415 F. 2d 1242 (C.A. 9, 1969) ..	22
<i>Stein v. Wirtz</i> , 366 F. 2d 188 (C.A. 10, 1966), cert. denied, 386 U.S. 996	22
<i>Stewart-Warner Corp. v. Westinghouse Elec. Corp.</i> , 325 F. 2d 822 (C.A. 2, 1963), cert. denied, 376 U.S. 944	22
<i>Wirtz v. Local Union 125, Laborers International Union</i> , 389 U.S. 477 (1968)	9, 23
<i>Wirtz v. Local Union 153, Glass Bottle Blowers Association</i> , 389 U.S. 463 (1968)	23
<i>Wirtz v. Local 191</i> , 321 F. 2d 445 (C.A. 2, 1963)	9
<i>Yablonski v. UMWA</i> , 71 LRRM 2606 (D.D.C., 1969) ..	9
<i>Yablonski v. UMWA</i> , 71 LRRM 3041 (D.D.C., 1969) ..	9
<i>Yablonski v. UMWA</i> , 305 F. Supp. 868, 876 (D.D.C., 1969), aff'd Nos. 23536 and 23659 (C.A.D.C., 1969) ..	9
<i>Yablonski v. UMWA</i> , 72 LRRM 2687 (D.D.C., 1969) ..	10

STATUTES:

Administrative Procedure Act, 5 U.S.C. 551, et seq.

Section 2 (5 U.S.C. 551)

37

Section 10 (5 U.S.C. 706)

37

	Page
<i>Federal Rules of Civil Procedure</i> , -Rule 24 . . .	2, 8, 20, 21, 22, 25, 30, 32, 34, 35, 36, 37
28 U.S.C. 1254	2
28 U.S.C. 2101	2
<i>National Labor Relations Act</i> , 29 U.S.C. 151, <i>et seq.</i>	
Section 8 (29 U.S.C. 158)	16
Section 10 (29 U.S.C. 160)	37
<i>Labor-Management Reporting and Disclosure Act of</i> 1959, 29 U.S.C. 401, <i>et seq.</i>	2
Section 3 (29 U.S.C. 402)	17
Section 201 (29 U.S.C. 431)	20
Section 210 (29 U.S.C. 440)	12
Section 301 (29 U.S.C. 461)	17
Section 304 (29 U.S.C. 464)	17, 31
Section 401 (29 U.S.C. 481)	2, 3, 4, 5, 11, 15, 21, 23, 32, 39
Section 402 (29 U.S.C. 482)	5, 6, 7, 11, 19, 23, 24, 25, 27, 29, 30, 32, 37, 38, 40, 42
Section 403 (29 U.S.C. 483)	7, 22, 23, 25, 27, 32
Section 404 (29 U.S.C. 484)	7
Section 501 (29 U.S.C. 501)	39
Section 601 (29 U.S.C. 521)	8, 42
Section 606 (29 U.S.C. 526)	37
 MISCELLANEOUS:	
4 Moore's Federal Practice	22
104 Cong. Rec. 10947, June 12, 1958	28
104 Cong. Rec. 10999, June 12, 1958	29
Brief for Secretary of Labor in Court of Appeals	36

	Page
<i>Department of Labor Interpretative Manual, Section 030.510</i>	17
<i>Department of Labor Legislative History of LMRDA</i>	27, 31
Hart and Wechsler, <i>The Federal Courts and the Federal System</i> (1953)	44
H.R. Rep. No. 741, 86th Cong., 1st Sess. 1959	29
H.R. Rep. No. 1147, 86th Cong., 1st Sess. 1959	31
<i>Notes of Advisory Committee on Rules</i> , 1966 revisions	35
<i>Hearings</i> , Senate Labor Subcommittee	9, 10, 13, 14, 15, 16, 33, 34, 43
S. Rep. No. 187, 86th Cong., 1st Sess. 1959	29
S. Rep. No. 1684, 85th Cong., 2d Sess. 1958	27
Shapiro, <i>Some Thoughts on Intervention before Courts, Agencies and Arbitrators</i> , 81 Harv. L. Rev. 721 (1968)	26, 27

IN THE
Supreme Court of the United States
OCTOBER TERM, 1971

No. 71-119

MIKE TRBOVICH, *Petitioner*

v.

UNITED MINE WORKERS OF AMERICA, ET AL.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONER

OPINIONS BELOW

The decision of the District Court is published as *Hodgson v. United Mine Workers of America*, 51 F.R.D. 270 (1970) (A: 111). The Court of Appeals affirmed without opinion. Its judgment is published at 77 LRRM 2496. (A: 122).

JURISDICTION

The Court of Appeals affirmed denial of petitioner's motion for leave to intervene by order of April 27, 1971. The petition for certiorari was timely filed under 28 U.S.C. 2101(c). Jurisdiction is conferred by 28 U.S.C. 1254(1). Certiorari was granted October 19, 1971, — U.S. —, and on October 26, 1971, this Court granted Petitioner's Motion to Expedite briefing and oral argument.

ISSUE PRESENTED

Whether a member of a labor organization who concededly satisfies all conditions for intervention of right under Rule 24(a), FRCP, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, *et seq.* (hereinafter "LMRDA"), to set aside a union election.

RELEVANT STATUTES

Title IV of LMRDA provides as follows:

Section 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or in-

ternational labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organiza-

tion officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions

of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

Section 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

Section 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

Section 404. The provisions of this title shall become applicable—

(1) ninety days after the date of enactment of this Act in the case of a labor organization whose constitution and bylaws can lawfully be modified or amended by action of its constitutional officers or governing body, or

(2) where such modification can only be made by a constitutional convention of the labor organization, not later than the next constitutional convention of such labor organization after the date of enactment of this Act, or one year after such date, whichever is sooner. If no such convention is held within such one-year period, the executive board or similar governing body empowered to act for such labor organization between conventions is empowered to make such interim constitutional changes as are necessary to carry out the provisions of this title.

Rule 24(a), FRCP, provides as follows:

"Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

STATEMENT

On December 9, 1969, an election of International Officers was held among the 195,000 members of the United Mine Workers of America. The election was the climax of a bitter contest for the Union's presidency between Joseph A "Jock" Yablonski and W. A. Boyle, the incumbent president. The pre-election period was marred by countless violations of the Union's constitution and federal law.¹ During the pre-election

¹ Yablonski, through his attorney, periodically filed extensive letters with the Department of Labor detailing these violations, and requesting government intervention. Each time the Secretary

period, Mr. Yablonski was forced to initiate five suits in the District Court for the District of Columbia to secure rights guaranteed him and other UMWA members under LMRDA. The first, *Yablonski v. UMWA* (C.A. 1662-69), sought and obtained an order compelling the union to mail Yablonski campaign literature to members. 71 LRRM 2606 (D.D.C., 1969). The second, *Yablonski v. UMWA* (C.A. 1799-69), sought and obtained an order requiring reinstatement of Mr. Yablonski to the position of Acting Director of Labor's Non-Partisan League, the lobbying arm of the UMWA, from which he had been fired a week after declaring his candidacy; the District Court found that Yablonski's firing was a political reprisal and ordered his reinstatement. 71 LRRM 3041 (D.D.C., 1969). The third, *Yablonski v. UMWA* (C.A. 2413-69), sought and obtained an order restraining the union from continuing to use its official organ, the *UMWA Journal*, as a campaign instrument for its incumbent officers. 305 F. Supp. 868, 876 (D.D.C., 1969), *aff'd*, Nos. 23536 and 23659 (CA-DC, 1969). The fourth, *Yablonski v.*

declined to initiate any investigation prior to the election, nevertheless conceding his power to make such investigations under Section 601(a) of LMRDA, 29 U.S.C. 521(a). Later, the Secretary stated that the statute barred pre-election investigations under Section 601. (A.62) Compare *Wirtz v. Local 125, Laborers' International Union*, 389 U.S. 477, 482 n. 5 (1968); *Wirtz v. Local 191*, 321 F.2d 445 (C.A. 2, 1963); *Local 57 v. Wirtz*, 346 F.2d 552 (C.A. 1, 1965). The correspondence is set forth in the record of the Labor Subcommittee's hearings, Senate Hearings, Subcommittee on Labor, UMW Election—1970, pp. 38-106.

With only his own resources to seek protection of rights guaranteed him and other UMWA members, Mr. Yablonski pursued the several suits noted in the text. In view of the Secretary's refusal to initiate any investigation during the pre-election period, it is not surprising that the evidence developed in Yablonski's pre-election suits forms the backbone of the Secretary's complaint in the present proceeding.

UMWA (C.A. 3061-69), sought to establish rules and safeguards for a fair election in connection with the December 9 balloting; the District Court denied preliminary injunctive relief on the basis of representations of counsel for the UMWA that certain of the election procedures sought by the Yablonski forces would be effected. 72 LRRM 2687 (D.D.C., 1969).²

The election was held as scheduled, and the incumbents declared themselves re-elected by a vote of 80,577 to 46,073.³ On December 18, 1969, Yablonski filed election challenges with the UMWA's International Executive Board, and served copies on the Labor Department. The bodies of Mr. Yablonski and his wife and his daughter were discovered in their home in Clarks-ville, Pennsylvania, on January 5, 1970.

On January 20, 1970, Mike Trbovich, campaign manager for Yablonski, filed a formal complaint with the Labor Department, incorporating Mr. Yablonski's

² The fifth suit, *Yablonski v. UMWA* (C.A. 3436-69), still awaiting trial, seeks an accounting and restitution from the UMWA's officers for funds misappropriated and misused, including funds used to insure the reelection of UMWA's officers during the 1969 campaign. (Notable in connection with this suit is the statement of Senator Harrison A. Williams, Chairman of the Subcommittee on Labor, which has investigated the 1969 UMW election: "Our investigation uncovered evidence of a pattern and practice of campaign financing which suggests that the quarter-million dollar campaign was financed directly and through indirect channels out of the UMWA Treasury in violation of the criminal provisions of the LMRDA." Hearings, Subcommittee on Labor, United Mine Workers—1971, July 12, 1971.)

³ Notably, where Mr. Yablonski was able to place observers at the polls, he "generally defeated Boyle or broke even with him": where Yablonski couldn't place poll watchers, Boyle "announced victories of almost 50 to 1 proportions." Senate Hearings, Subcommittee on Labor, UMW Election—1970, p. 78.

challenge of December 18, 1969, and requesting that the election be set aside (A. 35).⁴

On March 5, 1970, the Secretary filed this proceeding, based on petitioner's complaint, in the District Court for the District of Columbia. (A. 11). The first cause of action, brought pursuant to Section 402(b) of LMRDA, sought to have the election set aside on grounds of alleged violations of the UMWA constitution and LMRDA. As alleged by the Secretary, the union and the incumbent officers violated Section 401 of LMRDA by (1) failing to provide secret balloting in that many members were required or permitted to vote in such a manner that their choices could be identified, Section 401(a); (2) failing to provide adequate safeguards to insure a fair election, including permitting campaigning at the polls, Section 401(c); (3) denying candidates the right to have observers at polling places and present where ballots were counted, Section 401(c); (4) violating its own constitution in that many locals failed to elect tellers and to hold membership meetings to set the time and place for elections, Section 401(e); (5) denying its members the right to vote for candidates of their choice without being subject to penalty or reprisal, Section 401(e); (6) denying certain members the right to vote by failing to conduct elections in some locals, Section 401(e); and (7) using union funds, the union's official publication and other offices and properties, to promote the candidacies of incumbent officers, Section 401(g).

⁴ Petitioner's complaint was filed consistent with the statutory requirement of exhaustion of internal union remedies, Section 402(a) of the Act, the Union having waived exhaustion of these remedies after the murder of Yablonski, at the insistence of the Labor Department.

The second cause of action, under Section 210 of LMRDA, 29 U.S.C. 440, sought to require the union to maintain adequate financial books and records. (A preliminary injunction has been entered under the second cause of action, *infra*, p. 19).

All of these allegations were brought to the Department's attention by the communications of the Yablonski forces before and after the election. The information provided by these communications, the evidence presented in the pre-election suits and the findings and judgments in these cases noted above, form the backbone of the Secretary's suit. The Secretary's complaint, however, failed to present in the first cause of action two crucial issues, also raised by the Yablonski forces, relating to manipulation by the union and its incumbent officers of the votes of non-working members receiving pensions from the U.M.W.A. Welfare and Retirement Fund.

Because the UMW insists that retired members maintain union membership as a condition of pension eligibility, there is a substantial block of captive pensioned members.⁵ In fact, the approximately 70,000

⁵ Based on an unfair labor practice charge filed by petitioner, the National Labor Relations Board has filed a complaint seeking to require the UMWA to cease and desist from the practice of insisting that retired members maintain membership in good standing as a condition of pension eligibility. This matter is now pending before the Board, NLRB Case No. 5-CB-1013.

The findings of the District Court in *Blankenship v. Boyle*, 329 F. Supp. 1089 (D. D.C. 1971), a derivative class action involving mismanagement of the pension fund, are directly in point. The District Court found that the "trustees sponsored [a pension] application form which incorrectly implies that Union membership . . . is necessary before an application will be processed. . . . There

bituminous pensioners comprise over one-third of the UMW membership. The impact of these votes on the outcome was underscored by findings of the staff of the Senate Subcommittee on Labor in its investigation of the election. While it would not be possible to segregate votes of all of the bituminous pensioners—since many belonged to locals with at least some working members—the Subcommittee staff did analyze the votes of the 292 locals in the bituminous areas of the United States composed solely of pensioners. Of the 8,169 votes cast in these locals, over 93% were for Boyle. As the Subcommittee staff reasoned, if this figure is projected to all of the 70,000 potential bituminous pensioner votes, the impact on the election—with a margin of less than 35,000 votes—would appear obvious. Hearings, Subcommittee on Labor, UMW Election—1970, p. 291.

The overwhelming vote of the bituminous pensioners in favor of the Boyle slate is attributable largely to two factors: (1) a substantial increase in pension payments in the critical pre-election period, and (2) perpetuation of local unions comprised entirely, or almost entirely, of non-working members, in violation of the UMWA constitution.

The pension increase: On June 23, 1969, Boyle was designated union trustee of the bituminous pension fund, succeeding John L. Lewis who died earlier in

is ample documentary and testimonial evidence that applicants were improperly led by this form to believe that Union membership was a prerequisite for eligibility, and were often forced to make substantial payments, sometimes running into hundreds of dollars, as 'back dues' to reinstate their Union membership." 329 F. Supp. at 1105.

the month.⁶ The very next day—in the midst of the election campaign—pension payments were increased from \$115 to \$150 per month. The cost of the increase is about \$30 million annually. Findings of the District Court in *Blankenship v. Boyle*, 329 F. Supp. 1089, 1107-1110, and testimony before the Senate Subcommittee on Labor, Hearings, Senate Labor Subcommittee, United Mine Workers Election—1970, indicate that the June 24 pension increase was a politically motivated action, hastily secured by Boyle himself, without proper consultation with the other trustees of the Fund, and without consideration of its effects on the Fund's solvency.⁷

⁶ The other two trustees of the Fund at that time were George L. Judy, who had been designated operators' trustee on June 4, 1969, and Miss Josephine Roche, who had been neutral trustee for many years.

⁷ *Blankenship* is a derivative class action, brought on behalf of persons entitled to benefits from the UMWA Welfare and Retirement (Bituminous) Fund, against the Fund, certain present and former trustees, the UMWA, and the National Bank of Washington (74% of whose stock is owned by the UMWA). The suit alleged that the defendant trustees had breached fiduciary duties to Fund beneficiaries by, among other things, maintaining large balances—ranging from \$30 to \$75 million—in non-interest bearing checking accounts in the defendant Bank, and that the other defendants had conspired in the trustees' breach. The District Court determined on April 28, 1971 that the alleged breaches and conspiracy had occurred, enjoined continuation of such practices, and directed the ouster of Boyle and Miss Roche as trustees. Computation of damages is pending hearing in the District Court. (Significantly, the Court of Appeals for the District of Columbia, in denying the defendant Bank's application for a stay of equitable relief, held that it failed "to provide a sufficient showing of likelihood of success on the merits of the appeal" 77 LRRM 2931 (C.A.D.C., 1971).)

Relevant here is the conclusion of the District Court in *Blankenship* that in securing the June 24 pension increase, Boyle breached

The political motivation for the increase is underscored by the form of the "Notice to Trust Fund Pensioners" of June 27, 1969, announcing the action. While notices of previous increases were simply signed "U.M.W.A. Welfare and Retirement Fund", the notice of this increase was signed "W. A. Boyle—Chairman, Board of Trustees." Samples of several increase notices are reproduced in the Labor Subcommittee hearings, Hearings, Subcommittee on Labor, UMW Election—1970, pp. 191-192.

An actuarial study of the Fund, made by the U.S. General Accounting Office at the request of the Labor Subcommittee, indicates that the increase was fiscally reckless. The study recites:

"Based on projections prepared for this study, the United Mine Workers Welfare and Retire-

his fiduciary duty to Fund beneficiaries. The District Court found that Miss Roche, who was hospitalized at the time the increase was secured, and later voiced sharp criticism of it, "was not consulted or even advised of the action in advance", and that the operators' trustee, Judy, agreed to vote for the increase, partly because Boyle "falsely led [him] to believe" that he had Roche's proxy for the increase in his pocket. Further the District Court found that the increase was implemented without "detailed projections of the Fund's long-term ability to pay"; that the "increase was handled . . . with little recognition of its fiscal and fiduciary aspects"; and that the timing and hasty implementation of the increase were motivated by "election considerations." 329 F. Supp. at 1108-9.

Likewise relevant are the findings and conclusions of Senator Williams, Chairman of the Labor Subcommittee, made after lengthy testimony regarding the pension increase. Senator Williams found that the increase served "obvious political purposes" and was "one of the most decisive factors in the UMWA election." He concluded that the increase "represented a substantial and improper interference with the electoral process within the meaning of the statute (Sec. 401(a))." (A. 54).

ment Fund will become insolvent during the fiscal year ended June 30, 1973, if pensions continue at the rate of \$150 per month and no increase is made in contribution rates to the Fund."

Further, the study indicates that if pensions had been maintained at \$115 per month, Fund assets would not have begun to decline until the mid 1970's. Hearings, Senate Labor Subcommittee, UMW Welfare and Retirement Fund—1970, p. 217.

In testimony before the Labor Subcommittee, former Secretary of Labor Shultz took the position that, regardless of the fiscal unsoundness of the increase, the impropriety of Boyle's conduct, the political motivation of the increase, or its effect on the outcome of the election, the pension increase would not be "improper interference" in the sense of § 401. Hearings, Senate Labor Subcommittee, UMW Election—1970, pp. 344-45. (But see, *NLRB v. Exchange Parts*, 375 U.S. 405 (1964), construing parallel language in the National Labor Relations Act, 29 USC 158(a).) Thus, the Secretary's complaint failed to raise the pension increase issue or to seek remedial relief which would dissipate the political effect of the June 24 pension increase in the context of a rerun election.

Improperly constituted locals: The UMW constitution requires that local unions with less than 10 working members be abolished, and their members transferred to properly constituted locals. Nevertheless, the UMW allowed approximately 500 of its 1200 locals to remain in existence at the time of the 1969 election and thereafter despite the fact that they were not properly constituted. The perpetuation of the "bogus" locals and the voting of pensioners through

such locals carry grave potential for electoral abuse, which the Secretary of Labor has failed to recognize. First, under Section 030.510 of the Labor Department's Interpretative Manual, local unions with *no* working members—and more than half of the “bogus” locals have *no* working members—are excluded from the LMRDA definition of “labor organization”, Sec. 3(i) of the Act, 29 USC 402(i), and hence, are exempt from the reporting and disclosure requirements of Title II. In this connection, it must be recognized that 19 of the 23 UMWA districts are under trusteeship, so that their officials are appointed by the International union rather than being elected,⁸ and that most of the “bogus” locals which are exempt from the requirement of Title II are in Districts which are under International trusteeship. Appointed district officials control these exempt locals, and have untrammelled opportunities to expend their funds without accounting for them. Further, by allowing the 500 “bogus” locals to remain in existence, the incumbents have added immeasurably to the burden of any opposition slate. In order to police the conduct of any International election, an opposition party must, by virtue of these illegal locals, strain in vain to locate

⁸ The Department of Labor brought a suit in December 1964 under Title III of LMRDA, Sections 301 *et seq.*, 29 U.S.C. 461 *et seq.*, to restore autonomy in seven of the districts under trusteeship. Under Section 304(e), 29 U.S.C. 464(e), trusteeships are presumed invalid after having been in existence for 18 months. Some of these trusteeships date back several decades, and the presumption of invalidity clearly applies to all of them. Almost inexplicably, the Department of Labor has acquiesced in an interminable series of requests by the UMWA for delays in bringing the suit to trial. The suit finally came to trial July 15, 1971. As of this time, seven years after the initiation of the suit by the Labor Department, there is still no judgment in that case.

the sites of the polling places of these locals, must double their observer and poll worker forces, and must face insurmountable problems of communicating with more than one-third of the UMWA's membership. Worst of all, pensioners are often threatened with reprisals—particularly loss of pensions—in connection with voting, and in many instances denied their right to vote at all. See *Semancik v. Budzanoski*, 324 F. Supp. 1292 (W.D. Pa. 1971). In the case of the bogus locals—insulated from effective poll watching and without the presence of any significant number of working members—the amenability of pensioners to undue influence by the UMWA and agents of its incumbent officers is at a maximum. These pensioners were easy prey for the Boyle men that “ran” the elections in the bogus locals. Notably a major share of the election day violations raised and being litigated by the Secretary occurred in these bogus locals.

If these locals are allowed to be maintained during the course of a rerun election, the same abuses are certain to be repeated. To condemn the abuses without seeking relief that gets at their causes is simply to encourage protracted litigation on this point and to make any rerun a mockery. Nevertheless, the Secretary's complaint fails to raise this issue, just as it failed to raise the politically-motivated pension increase.

The Secretary's complaint was also noticeably weak with respect to the second cause of action. The affidavits filed by the Department of Labor investigators demonstrate that for the three-year period, 1967-1969, expenditures of more than \$10 million in funds of the International Union had not been accounted for. Despite such massive irregularities, the Secretary sought only to require the International Union to

maintain adequate books and records in the future.⁹ The Secretary did not seek establishment of a monitorship to assure preservation of union assets in the course of a rerun election as authorized by 29 USC 482(b).

The inadequacy of the relief sought by the Secretary under the second cause of action is particularly apparent, in view of the breadth of the findings of fact entered by the District Court incident to the granting of the limited preliminary injunctive relief sought by the Secretary, *Hodgson v. United Mine Workers of America*, 77 LRRM 2332 (D. D.C. 1971). While the Secretary sought—and the District Court consequently granted—only injunctive relief for the future, the District Court found that during the years 1967, 1968, and 1969, the UMW failed to keep and maintain adequate records regarding expense account disbursements, disbursements for organizing, mine safety work, lobbying, etc., and transferred substantial amounts of money in the form of loans or advances to various of its districts without keeping records of amounts advanced, or amounts repaid, if any.

On April 1, 1970, a group of coal miners organized Miners for Democracy, a reform party within the UMW, aiming to assure democratic elections at all levels of the union and to restore sound management of the union's assets. Petitioner was elected National Chairman of the group.

On October 2, 1970—when the Department's suit and motion for a preliminary injunction had made no

⁹ In addition, affidavits filed by Labor Department investigators indicate that during the same period more than \$1,800,000 of expenditures by UMWA Districts were not documented.

visible progress more than six months after suit was initiated—petitioner moved, on behalf of himself and Miners for Democracy, for leave to intervene as of right under Rule 24(a), or, in the alternative, for permission to intervene under Rule 24(b). (A. 28).¹⁰ Petitioner proposed additional allegations to be litigated, relating to the political manipulation of the pension fund, perpetuation of the “bogus” locals, and the union’s failure to provide and make available to its members adequate information about, and records of, its finances, as required by Section 201 of LMRDA. Further, petitioner proposed to add four specific claims for relief requiring (1) disbanding of the bogus locals; (2) installation of a Board of Monitors to oversee UMWA financial affairs; (3) publication of a finding that the incumbent president breached his fiduciary duty to all members by manipulating the Fund for political benefit, in order to dissipate the effect of the pension increase on the pensioned voters; and (4) establishment of rules for conduct of a rerun election, or appointment of a panel, to be paid out of UMW funds, to establish and enforce fair rules for a rerun election. (A. 31-34).

The District Court did not in any way deny that petitioner satisfied the conditions for intervention of right. Rather it made the inference—a patent *non sequitur*, as we shall show—that since Congress accorded the Secretary sole authority to *initiate* suit, it also meant to preclude intervention. For the same

¹⁰ The snail-like pace of the prosecution is best demonstrated by its toleration of the union’s failure to file an Answer to the Complaint until more than nine months after suit was brought (A. 10). An Answer was filed only after the request for intervention had raised the issue.

reason the District Court denied permissive intervention. (A. 115).

The Court of Appeals affirmed summarily. Its judgment cited "substantial agreement" with the District Court's opinion. (A. 122).

It is significant that the Secretary conceded in oral argument in the Court of Appeals that petitioner fully satisfies the conditions for intervention of right under Rule 24(a).¹¹ Given the concession, it is unnecessary to labor the point that petitioner has substantial interests which will be practically affected by this proceeding and which are not adequately represented by the Secretary. Suffice it to say that petitioner and those he represents have strong interests in assuring that all violations of Section 401—those alleged by the Secretary as well as those touching manipulation of the pensioner votes—be presented forcefully and effectively. Assuming that there is to be a rerun election, petitioner and the persons he represents have urgent interests in securing relief, particularly in helping to shape guidelines that will genuinely assure a fair, honest election, and preservation of union assets in the meantime.¹²

¹¹ The Secretary's opposition to certiorari says he is "unaware of any . . . concession." But counsel for petitioner, who were present at the court of appeals argument, remain firm in their contention that such a concession was, in fact, made during the argument and notably, the Secretary does not deny this. Petitioner can well understand that the Secretary may now wish not to be bound by the concession of his attorney who argued for him in the Court of Appeals, but that can hardly avoid the force of the concession. Moreover, as indicated in the text, petitioner fully satisfies all conditions for intervention of right.

¹² After repeated delays, trial of the Secretary's suit commenced September 13, 1971. As of the date of this brief, the Government has yet to complete the presentation of its case. The UMW has

ARGUMENT

1. Allowance of Intervention by a Union Member Who Concededly Meets the Standards of Rule 24(a) Is Not Expressly Forbidden by the Relevant Statutory Provisions, and, Considered in Conjunction With This Court's Prior Decisions Construing LMRDA, Is Necessary for Full Protection of Title IV Rights

The Court of Appeals held that intervention in the Secretary's suit is precluded by Section 403 of the Act, 29 U.S.C. 483 which states:

"the remedy provided by this title for challenging an election already conducted shall be exclusive."¹³

listed more than one hundred and seventy witnesses that it intends to call for the defense. Should this Court reverse the decision of the Court of Appeals and remand this case to the District Court, petitioner and his counsel could assist the Government in the cross examination of union witnesses, aid the government in the presentation of any rebuttal, and request leave to present their affirmative case that the pension increase constituted "improper interference" with the pensioners' voting rights, and that the election was not conducted pursuant to the union's constitution inasmuch as balloting was conducted in the bogus locals. Additionally, petitioner would participate in the final arguments, submit a brief and proposed findings, and participate in the formulation of an order and guidelines for the conduct of a new election. While petitioner recognizes that the scope of his participation as an intervenor would be subject to the discretionary power of the District Court, this is the very sort of case in which the purposes of intervention would be served by allowing the intervenor broad leeway, *Stewart-Warner Corp. v. Westinghouse Elec. Corp.*, 325 F. 2d 822 (C.A. 2, 1963), cert. denied, 376 U.S. 944; *Spangler v. United States*, 415 F. 2d 1242 (C.A. 9, 1969); 4 Moore's Fed. Practice, Par. 24.16(4), p. 117 (2d ed. 1968).

¹³ The only other court of appeals decision on this point is *Stein v. Wirtz*, 366 F. 2d 188 (C.A. 10, 1966), cert. denied, 386 U.S. 996 also holding intervention precluded by Section 403. But there the appeal and the petition for certiorari were *pro se*. Moreover, Stein's motion to intervene was denied prior to the effective date of the 1966 amendments liberalizing Rule 24, and accordingly the Tenth Circuit looked to the former Rule in deciding the appeal, see *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129, 135-136 (1967).

However, intervention is not expressly precluded by the terms of Section 403. (See Section 2, *infra*, pp. 25-34.) Nor does the Court of Appeals holding find support in the relevant statutory scheme taken as a whole or in this Court's prior decisions under Title IV. Indeed, allowance of intervention is necessary for full protection of Title IV rights as construed in this Court's prior decisions. (See Section 3, *infra*, pp. 34-44.)

The statutory requirements for union elections are set forth in Section 401 of LMRDA, 29 U.S.C. 481, and the remedy for violations of those requirements in Section 402, 29 U.S.C. 482. After a union election has been conducted, an aggrieved union member, having pursued internal union remedies, may complain to the Secretary of Labor under Section 402. Upon complaint, the statute directs the Secretary to investigate and—if he finds probable cause to believe that violations occurred which may have affected the outcome of the election—to bring suit in the appropriate district court.

In its earliest LMRDA decision, this Court held that Title IV “sets up an exclusive method for protecting Title IV rights” *Calhoon v. Harvey*, 379 U.S. 134, 140 (1964). Subsequently, in *Wirtz v. Local Union 125, Laborers International Union*, 389 U.S. 477, 482 (1968), this Court affirmed that Title IV protects both the “public interest” and “the rights and interests of union members.” And in *Wirtz v. Local Union 153, Glass Bottle Blowers Association*, 389 U.S. 463 (1968) (holding that a supervening unsupervised union election does not moot a suit brought by the Secretary), this Court renounced narrow constructions of Title IV

which "leave unvindicated the interests protected by Section 401." 389 U.S. at 475.

Intervention by the complaining party is thoroughly consistent with *Calhoon*. *Calhoon* dealt with the Congressional decision to make Title IV machinery the exclusive remedy for challenging union elections, and this Court determined that exclusivity was in service of three Congressional objectives: (1) to prevent pre-election suits that would "block or delay union elections", 379 U.S. at 140; (2) to allow unions "latitude in resolving their own internal controversies . . . before suits against them are initiated", 379 U.S. at 140; and (3) "to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts", 379 U.S. at 140-41. Once an election has been conducted and suit by the Secretary has been initiated, intervention by the complaining member does not interfere with any of these goals. On the contrary, given the limitations on individual members' litigating and procedural rights necessarily dictated by exclusivity and the *Calhoon* decision, it is necessary that intervention be allowed, if members' Title IV rights are to be fully protected.

Moreover, as indicated below (Section 3, *infra*, p. 40), intervention by the complaining members appears especially appropriate in view of this Court's decision last Term in *Hodgson v. Steelworkers, Local 6799*, 403 U.S. 333 (1971), holding that the Secretary may litigate only those alleged violations that were raised by the complaining member before his union. This limitation on the Secretary's conduct of the litigation expanded and highlighted the complaining member's role in the pre-litigation phase of a Section 402 suit. In

view of *Hodgson*, it would be unreasonable totally to deny the complaining member's litigating and procedural rights after suit is brought.

2. Intervention Is Not Precluded by Section 403 of the Act

Given the Secretary's concession that petitioner fully satisfies all conditions for intervention of right under Rule 24(a), and given the liberal purpose of the 1966 revision of the Rule, the Secretary has a heavy burden of demonstrating either clear language in LMRDA or clear indication in the legislative history in support of his position that LMRDA precludes intervention. Petitioner maintains that neither burden can be borne.

By providing that the remedy described in Section 402 of the Act, 29 U.S.C. 482, is "exclusive", Section 403 makes clear that the Secretary has the sole authority to *initiate* suits to upset union elections... Section 403 does not specifically provide that the Secretary shall be the sole party-plaintiff, nor that other persons interested in the proceeding may not intervene.

Generally, intervention in proceedings in federal district courts is governed by Rule 24, FRCP. Under Rule 24(a)(2), a person is entitled to intervene as a matter of right when he "claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Petitioner submits that there is nothing in the language or in the legislative history of the LMRDA calling for an exception to Rule 24's application.

The lower courts' decision to the contrary rests on a reading of Section 403 of the Act which confuses the

right to *initiate* suit with the right to *intervene* in litigation already under way. The rights to initiate suit and to intervene are distinct and are not co-extensive.^{13a} The fundamental nature of the distinction between them has been stressed by Professor David Shapiro.

“Perhaps it should go without saying, but it must be understood that there is a difference between the question whether one is a proper plaintiff or defendant in an initial action and the question whether one is entitled to intervene. Thus, to decide whether a particular action may be brought by this plaintiff against this defendant may require a determination of whether the controversy is ripe for adjudication, whether the parties before the court are real parties in interest, and whether the interests asserted are sufficient to mobilize the judicial machinery. When one seeks to intervene in an ongoing lawsuit, these basic questions have presumably been resolved; the disposition of the request, then, should focus on whether the prospective intervenor has a sufficient stake in the outcome to contribute to the resolution of the controversy to justify his inclusion.” Shapiro, *Some Thoughts on Intervention before Courts, Agencies and Arbitrators*, 81 Harv. L. Rev. 721, 726 (1967).

Professor Shapiro's comments regarding Title IV of LMRDA highlight the Court of Appeals' confounding of initiation and intervention in this case.

“Under Title IV of the Landrum-Griffin Act, only the Secretary of Labor can initiate an action to set aside a union election, but it need not follow that the complainant who starts the machinery of the Secretary in motion may never intervene to protect his interest once a case is filed. That de-

^{13a} This Court has permitted intervention in diversity cases even where the presence of the intervenor as an initial party plaintiff or defendant would have destroyed complete diversity. *Phelps v. Oaks*, 117 U.S. 236, 241 (1886).

termination may well turn on a number of factors quite separate from his standing to sue, including the nature of his interest and the adequacy of the protection afforded that interest by existing parties.” (Id., at 727.)

Nor does the legislative history support the Court of Appeals’ reading of the Act. On the contrary, the legislative history reveals that Congress’ intent in enacting Sections 402 and 403 was to provide the strongest possible judicial enforcement of rights protected by Section 401, at the same time avoiding piecemeal litigation and excessive disruption of union affairs. Piecemeal litigation is avoided by the direction in Section 403 that the remedy provided in Section 402 shall be exclusive. Excessive disruption of union affairs is avoided by the requirements of Section 402 preconditioning initiation of suit on (1) pursuit by the complaining union member of internal union remedies, and (2) the Secretary’s determination of probable cause to believe that violations occurred and may have affected the outcome of the election.

When viewed in light of these objectives, it is apparent that Congress’ choice of a scheme of judicial enforcement vesting initiation of suits in the Secretary suggests no intent to preclude intervention.

Sections 402 and 403, as ultimately enacted in 1959, had their origin in a bill introduced by Senator Kennedy in 1958 (S. 3751, introduced May 5, 1958), *Department of Labor Legislative History of the Labor-Management Reporting and Disclosure Act*, p. 700. This was incorporated in S. 3974 which was passed by the Senate in 1958. *Legislative History, supra*, p. 760. The wording of the sections, as introduced by

Senator Kennedy and passed by the Senate in 1958, was, in all relevant respects, identical to that of the sections as finally enacted in 1959.

When the report of the Senate Committee on Labor and Public Welfare on S. 3974, S. Rep. No. 1684 (85th Cong., 2d Sess. 1958) was submitted, Senator Kennedy explained why authority to bring suit was vested in the Secretary. His explanation stressed that suits by the Secretary would provide stronger enforcement of members' rights to fair and honest elections than suits by members, since the latter frequently would lack adequate resources to bear the burden of litigation by themselves. He spoke in these terms:

"In the bill we provide the right to appeal to the Secretary of Labor whenever a member believes that his rights, as provided in the case of an election have been denied him. Then the Secretary of Labor in effect becomes the union member's lawyer. Such a provision is infinitely stronger than any provision now in effect." 104 Cong. Rec. 10947, June 12, 1958.

Senator Kennedy affirmed that the authority to sue was given to the Secretary, "in order that the Secretary of Labor can look after a *member's interests*." (Emphasis supplied). Later the same day, Senator Kennedy underscored the role of the Secretary as aiding union members in enforcing their rights:

"*The bill adds to and does not detract from the members' rights.* In addition, under the bill they will have the right to invoke the aid of the Secretary of Labor and the Federal Courts to relieve their loads of oppressive trusteeships maintained by national and international unions for improper and undemocratic purposes. They will also have the right to invoke the aid of the Secretary in as-

sureing that their constitutional officers are elected democratically by secret ballot, that members are not improperly denied the right to vote, and that elections are properly conducted." 104 Cong. Rec. 10999, June 12, 1958. (Emphasis supplied).

The original understanding of Section 402 was quite clear. Senator Kennedy, on the floor of the Senate, made as explicit as words possibly can that the rights being protected were the union members' rights, and that the role of the Secretary was to aid them in enforcing those rights because in election disputes the costs of litigation were too heavy for union members to bear by themselves.

These explanations of Senator Kennedy settled the issue in the Senate. The next year the provision was reincorporated in S. 1555, the new bill reported out by the committee, S. Rep. No. 187 (86th Cong., 1st Sess. 1959), and passed by the Senate without any comment.

Two major alternatives to this scheme were before the Congress. First, the bill adopted by the House of Representatives would have authorized union members—rather than the Secretary—to initiate suit, after exhausting internal union remedies, to set aside union elections.¹⁴ Second, a bill before the Senate, supported by Senator Goldwater and the administration, S. 748; (86th Cong., 1st Sess. 1959), authorized the Secretary to initiate election-challenge suits, but also provided

¹⁴ The bill reported out by the House Committee on Education and Labor, H.R. 8342, provided for suit by members rather than by the Secretary. No explanation for this was given in the Committee report, H.R. Rep. No. 741 (86th Cong., 1st Sess. 1959), nor in House floor debates. Provision for initiation of suit by union members was copied without comment in the Landrum-Griffin substitute bill, H.R. 8400, which passed the House.

that union members, without exhausting internal remedies, could bring suit in any court of competent jurisdiction, raising claims not raised by the Secretary.

No intent to preclude intervention can be inferred from the fact that the Senate chose the Kennedy bill, and not the Goldwater-Administration bill, if for no other reason than that the Senate never even voted on this alternative. Moreover by allowing union members to initiate suit in any court of competent jurisdiction, whether state or federal, the Goldwater bill would have spawned piecemeal litigation, which the language of Section 403 of the Act shows Congress was seeking to avoid. Further, by allowing union members to initiate suit without exhausting internal remedies, and without any determination by the Secretary that the election had probably been affected by violations of the Act, the Goldwater bill would have caused substantial disruption of union affairs; the language of Section 402(a) and (b) makes unmistakably clear that Congress sought to limit such disruption. At any rate, the Goldwater bill had no relevance to the question of intervention; hence, non-adoption of the Goldwater bill may not logically be taken as evincing any intent to preclude intervention. On the contrary, the Goldwater bill's provision for initiation of suits by members, separate from the Secretary's suit, may have been thought unnecessary in view of the presumed availability of intervention under Rule 24, FRCP. (See note 15, *infra*, p. 31.)

Similarly, no intent to preclude intervention may be found in the Conference Committee's choice of the Kennedy bill—authorizing the Secretary to initiate suits—over the House bill, which authorized initiation of suits solely by members. First, the Conference

Committee's report offers no explanation for this choice. H.R. Rep. No. 1147 (86th Cong. 1st Sess. 1959). To the extent that reasons can be inferred, it appears that the Conference Committee's preference for the Senate version stemmed from the same considerations enunciated by Senator Kennedy. Some light on the Conference Committee's decision is shed by statements of Senator Goldwater, a member of the Committee, to the Senate, while the work of the Conference Committee was under way:

"... the approach of the Senate bill is substantially preferable in its reliance on Government, rather than *exclusively* individual, enforcement action. Since the election standards are designed to insure honest elections for the benefit of all union members as a matter of public policy, their violation is a matter of public rather than *exclusively* individual concern and should be enforceable in the same way as the trusteeship standards in the bill ..."¹⁵ (Cong. Rec. 16489, Senate, August 20, 1959, *Legislative History*, *supra*, 830.) (Emphasis supplied.)

Rejection of the House bill, then, signifies that Congress decided that as a matter of public policy, *exclusive* reliance on union members for initiation and conduct of litigation challenging union elections would

¹⁵ It is notable that trusteeships can be voided by action of either the Secretary or the individual union members under Section 304 of the Act, 29 U.S.C. 464. Thus, at least in Senator Goldwater's view, the Conference Committee's rejection of the House's reliance on "exclusively individual enforcement action" left individuals with an enforcement role analogous to that under the trusteeship provisions. Since the Senate had granted sole authority to *initiate* election suits to the Secretary, thereby passing over the Goldwater-Administration bill, Senator Goldwater evidently contemplated that individuals could, under the Senate bill, perform this enforcement role by way of intervention.

not adequately enforce rights protected by Section 401. Rather than downgrading the interests of individual members in assuring fair and honest elections, this determination accorded greater recognition to those interests by lending the prestige and resources of the Secretary to their enforcement. Surely the legislative desire to avoid piecemeal litigation—as expressed in Section 403, vesting sole authority to *initiate* suit in the Secretary—serves to assure effective and efficient enforcement of Title IV and is consistent with the policy underlying the Conference Committee's decision. The legislative aim of avoiding undue disruption of internal union affairs, served by preconditioning suit on pursuit of internal remedies and determination of probable cause, is also consistent with the policy of enhancing enforcement of rights protected by Title IV. In contrast, a legislative intent to preclude intervention, and thereby deny individual members any access whatsoever to the judicial machinery for challenging elections, would be totally inconsistent with the clear indications that it was *their* rights which Congress was seeking to protect by enacting Title IV and, specifically, by involving the Secretary in the enforcement process.

In sum, the only clear legislative history with respect to union members' participation in Title IV suits brought by the Secretary is to be gleaned from the 1958 debate and not from the various proposals which were rejected in 1959 in favor of the exact provisions which passed the Senate in 1958. The suggestion that the right of intervention, which otherwise would have been available to an interested union member under Rule 24, would be denied to him under Section 402, is simply at odds with Senator Kennedy's

explicit announcement that the identical provision in the 1958 bill "adds to and does not detract from the members' rights."

Even if the legislative history could somehow be deemed to leave room for doubt, surely doubts should be resolved in favor of the individual members whom Congress sought to protect and not in favor of entrenched union leadership. Strong support for this view was expressed in recent testimony of Senator Robert P. Griffin before the Senate Labor Subcommittee in a hearing focusing on the Department of Labor's administration of LMRDA, and whether it has lived up to the intent of the legislating Congress. As one of the principal sponsors of LMRDA, with which his name is popularly connected, Senator Griffin speaks with authority regarding the intent of Congress in enacting this legislation. As a general matter, Senator Griffin stated,

"... I am compelled to say that . . . over the past 12 years under four Administrations the Labor Department has generally been timid and reluctant to give Landrum-Griffin the vigorous implementation and strict enforcement Congress expected."

With respect to the question posed here, Senator Griffin had the following to say:

Even though Congress gave exclusive authority to the Secretary of Labor to *initiate* such suits, I am aware of no clear requirement that complaining parties must be excluded once legal proceedings have been initiated. Once again it seems to me, doubts have been resolved against the worker and in favor of the entrenched union hierarchy."

Hearings, Subcommittee on Labor, UMW Election—July 13, 1971. (Prepared statement of Senator Griffin.) The Secretary would dismiss the testimony as “a legislative afterthought” spoken “in the context of a highly charged political atmosphere. . . .” But Senator Griffin spoke critically of the Labor Department’s implementation of LMRDA under Democratic and Republican administrations alike; hence, his views can hardly be discounted as “political”. Further, it should be noted that the occasion of Senator Griffin’s statement was fundamentally non-political. The Labor Subcommittee was simply performing its legitimate task of evaluating the Labor Department’s administration of LMRDA and considering the possible need for amendments. Certainly, the view of a principal sponsor regarding the aims and intent of the enacting Congress was highly relevant to this task, and *equally* relevant to the issue at hand.

3. Intervention by Union Members Whose Interests Are Not Adequately Represented by the Secretary Is Necessary to the Protection of Their Rights Under Section 401 of the Act and To Realization of the Congressional Purpose of Assuring Fair and Honest Union Elections

Rule 24 represents the considered judgment of the Advisory Committee on Rules as to when intervention is appropriate. The judgment necessarily represents a balancing of the interests of proposed intervenors with the interests of the original parties in controlling the course of the litigation and avoiding proliferation of parties and issues. Rule 24(a) does not accord an unqualified right of intervention to all persons in all circumstances. Only those who genuinely claim an interest in the proceeding which is not shown to be adequately represented by existing parties are entitled to intervene as a matter of right.

Further, the Notes of the Advisory Committee on Rules regarding the 1966 revision of Rule 24 indicate, "An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." As has been indicated, petitioner is seeking to do two things by way of intervention: first, to raise certain issues not raised by the Department, and, second, to assure that those violations which the Secretary has alleged will be vigorously presented and their recurrence effectively prevented by the order of the District Court. Certainly the Secretary—like any other party to any other suit—may adduce legitimate interests in avoiding proliferation of parties and issues and in controlling the course of litigation. To the extent that these interests are legitimate, however, they are adequately protected by Rule 24 itself. A total ban on intervention, as advocated by the Secretary, would be a disservice to the rights of union members which LMRDA commands the Secretary to protect. Given the balancing inherent in Rule 24, such an extreme position is totally unnecessary to protect any legitimate interest of the Secretary.

The appropriateness of intervention of right in this case is especially clear in view of the 1966 revision of Rule 24(a) removing restrictions which had encumbered intervention under the former Rule.¹⁶ This Court in *Cascade Natural Gas Corp. v. El Paso Natural*

¹⁶ Inexplicably, the District Court cited *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 694 (1961), for the proposition that one may not intervene in the litigation of others as a matter of right unless "he shows the equivalent of being legally bound by the decree in their case." This is clearly no longer the law in view of the 1966 revision of Rule 24(a).

Gas Corp., 386 U.S. 129 (1967), declared that under the revised Rule 24(a), "some elasticity was injected", 386 U.S. at 134, and expanded the right of competitors and customers to intervene in government antitrust suits. In dramatic contrast, there is no "elasticity" whatsoever in the Secretary's position regarding intervention in this case. The absolute rigidity and arbitrariness of the Secretary's position are best illustrated by his own statement:

"The short of the matter is that intervention is precluded by the LMRDA, irrespective of the degree of substantiality of the claims which the applicant for intervention presents or the wisdom of the Secretary's decision not to raise certain issues." (Brief for the Secretary of Labor in the Court of Appeals, p. 36.)

In this case there is no question that petitioner satisfies the conditions of Rule 24(a) for intervention of right. In fact, counsel for the Secretary conceded as much in oral argument before the Court of Appeals, arguing that regardless of the degree to which petitioner may have substantial interests in the proceeding, and regardless of the degree to which those interests may be inadequately represented, intervention is absolutely precluded.

The desirability of intervention here is closely analogous to that recognized by this Court in *International Union, UAW v. Scofield*, 382 U.S. 205 (1965). The question in *Scofield* was whether parties wholly successful in NLRB unfair labor practice proceedings are entitled to intervene in court of appeals review and enforcement proceedings. In *Scofield*, as here—and we have been able to find no other instance—it was argued that the relevant statutory scheme, Section

10(e) and (f) of the National Labor Relations Act, 29 U.S.C. 160(e) and (f), evinced a legislative intent to create an exception to normal procedural rules and absolutely to preclude intervention. This Court held, applying Rule 24 by analogy, that the successful party before the Board—whether a charged party of a charging party—is entitled to intervene in court of appeals proceedings.

As the party whose complaint triggered the Secretary's Section 402(b) investigative and enforcement machinery, petitioner is in a posture similar to that of a successful charging party before the NLRB. Respondent Secretary attempted, in his opposition to certiorari, to distinguish *Scotfield* by asserting that his determination of probable cause under Section 402 of LMRDA is not an "adjudication" and hence, that petitioner cannot be regarded as a "successful party" in the sense of *Scotfield*. But the case law developed under LMRDA and the Administrative Procedure Act does not support the Secretary's contention. Notably, Section 606 of LMRDA provides that the APA shall apply to "any adjudication . . . pursuant to the provisions of this Act." As defined by APA, an "adjudication" is any "agency process for the formulation of an order" and an "order" is any "final disposition, whether affirmative, negative, injunctive or declaratory in form, of an agency in a matter other than rule making" 5 USC 551(6) and (7). The courts have exercised judicial review of the Secretary's determinations not to sue under Section 402 of LMRDA, precisely as provided in Section 10(e) of APA, 5 USC 706, holding that complaining parties under Section 402 "have a judicially enforceable right to demand that the Secretary exercise his discretionary authority in a

manner consistent with the requirements of the Act and not arbitrarily or capriciously." *DeVito v. Shultz*, 300 F. Supp. 381, 383 (D.D.C., 1969); *Schonfeld v. Wirtz*, 258 F. Supp. 705, 708 (S.D.N.Y., 1966). This very exercise of judicial review presupposes the adjudicatory character of the Secretary's determination. Conversely, where the Secretary determines that the allegations presented by the complaining member have sufficient merit to constitute "probable cause", and he brings suit, such as here, his determination is also adjudicatory in character and the complaining member then has interests analogous to those of the "successful party" before the NLRB and under *Scotfield* should be permitted to participate in subsequent judicial proceedings.¹⁷

Most, if not all, of the considerations underlying this Court's decision in *Scotfield* also obtain here.

¹⁷ There is a striking parallel between the NLRA enforcement mechanism for remedying unfair labor practices, and the enforcement scheme under Title IV of LMRDA. In each case, a charging party makes a complaint, in one case with the Regional Director of the National Labor Relations Board, and, in the other, with the Secretary of Labor. If the charging party is successful, in each case a quasi-judicial determination is made: in one case, that unfair labor practices have occurred, and, in the other, that violations of LMRDA have occurred which may have affected the election outcome. In each case, the extra-judicial determination is not self-enforcing.

The adjudicatory process is different in certain respects in NLRB proceedings from that in Section 402 proceedings before the Secretary. But the APA contemplates both types of proceedings, namely, adjudications with agency trial type hearings and formal findings and conclusions, which are entitled to enforcement if supported by substantial evidence, and those less formal agency proceedings which require a judicial trial *de novo*. The Secretary's determination not to sue is no less an "order" within the meaning of APA than an NLRB decision, since both are subject to judicial review. See, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

First, this Court was concerned with avoiding duplication of judicial proceedings; this Court stressed that if the initial Board decision were reversed by the court of appeals, and the Board then entered an order adverse to the initially successful party, that party would then be able to seek court of appeals review, raising issues already presented to the court of appeals. Here, petitioner has causes of action independent of this proceeding by which he can try to vindicate his interest under the UMW constitution in assuring abolition of the improperly constituted locals and publication of an order dissipating the effect of the incumbent president's political manipulation of the pension fund. Here as in *Scofield*, the policy of avoiding piecemeal judicial proceedings supports intervention.

Second, this Court expressed concern in *Scofield* that denial of intervention in court of appeals proceedings would result in unfairness to the initially successful party in that the *stare decisis* effect of the court of appeals decision could adversely affect his interest in subsequent Board and court of appeals proceedings arising from the same complaint, and in collateral proceedings. Similarly, petitioner's interest in assuring effective guidelines for a rerun election and his interest in collateral proceedings will undoubtedly be affected by decision in this proceeding.¹⁸

¹⁸ For example, it is alleged in *Yablonski v. UMWA* (C.A. 3436-69), in which petitioner is a plaintiff, that the incumbent officers utilized union funds to promote their reelection campaigns in violation of their fiduciary duties to the union under Section 501(a) of LMRDA. Clearly, petitioner's interest in that suit will be practically affected by the resolution of the Secretary's allegation that union funds were used in the incumbents' campaign in violation of Section 401(g) of LMRDA. (A. 14).

Third, this Court in *Scofield* expressed concern that the Board might not adequately represent the interest of the successful party before the appellate court, either by failing vigorously to press the doctrine underlying its own decision or by failing to apply for certiorari in the event of reversal by the court of appeals. Here it is evident that the allegations and request for remedy stated in the Secretary's complaint are inadequate to represent petitioner's interest in assuring a democratic election.

Fourth, this Court in *Scofield* emphatically rejected the Board's argument that the successful charging party is "but another member of the public whose interests the Board is designed to serve" and that the Board "is the custodian of the 'public interest' to the exclusion of the so-called 'private interests' at stake." 382 U.S. at 204. This Court stressed that utilization of the "rhetoric of 'public interest' . . . is not to imply that the public right excludes recognition of parochial private interests." *Ibid.* Moreover, this Court's decision last Term in *Hodgson v. Steelworkers, Local 6799*, 403 U.S. 333 (1971), holding that the Secretary may litigate only those alleged violations which were raised by the complaining member before his Union, expands and highlights the importance of the complaining member's role in the pre-litigation phase of a Section 402 suit. Nevertheless, the Secretary persists in arguing that the interests claimed by petitioner are not part of the "public interest" which LMRDA seeks to protect. This is not only inconsistent with *Scofield*, but with clear indications in the legislative history that the rights to be protected by the Secretary's Section 402(b) suits were those of union members, *supra*, pp. 28-29. After *Hodgson*, the claims which

the Secretary may raise are limited to those raised initially *by the complaining member* before his union, and brought *by the complaining member* to the Secretary's attention, and not other possible claims which the Secretary may discover in the course of his own investigation. Since the NLRB is not similarly limited to the allegations of charging parties, the complaining party before the Secretary has an even greater role than the charging party before the Board, and hence, even stronger standing to intervene in subsequent judicial proceedings.

Fifth, the Court reasoned that denying participation to the successful party but allowing it to the unsuccessful party would prejudice the former for his success before the Board. This Court indicated that it would have to attribute capriciousness to Congress in order to conclude that only unsuccessful parties could participate in court of appeals review proceedings. Yet the same capricious distinction has been drawn here. There appears to be little question but that a union officer may intervene as a defendant in a Section 402(b) suit against a union to set aside that officer's election. In *Shultz v. United Steelworkers of America*, 312 F. Supp. 538 (W.D. Pa.), a union district director whose election was challenged by the Secretary's suit was allowed to intervene because he might be removed from his job and "lose his salary". 312 F. Supp. at 539. Inasmuch as the Secretary had found probable cause to believe that the district director's election was tainted by violations of Section 401, the intervening district director was clearly the "unsuccessful party" with respect to the Secretary's quasi-judicial determination. The Secretary—one might say "capriciously", given this Court's comments in *Seofield*—persists in the position that intervention by the unsuccessful charged

party is consistent with LMRDA, but that intervention by the successful charging party is precluded.¹⁹

In addition to serving the interests of concern to the *Seafeld* Court, allowance of intervention would yield other practical benefits in assuring effective enforcement of LMRDA. For example, the Secretary and those designated by him to enforce Title IV have limited knowledge of the internal structure of particular unions and have limited resources for investigating alleged violations. While the Secretary and his designees undoubtedly have expertise on union election processes generally, they cannot be intimately familiar with the unique internal structure of the UMW and the subtle devices which may be used unlawfully to distort the election process. Limitations on their familiarity with these matters are aggravated by the refusal of the Secretary to exercise his unquestioned authority under Section 601(a) of LMRDA to initiate investigations prior to election. It must be noted that Section 402(b) of LMRDA allows the Secretary only 60 days for investigation of complaints submitted pursuant to Section 402(a). Given the Secretary's refusal to exercise his statutory power to investigate prior to election, the 60-day investigation period allowed by Section 402(b) cannot be sufficient fully to familiarize the

¹⁹ As a practical matter, union incumbents, who have been "unsuccessful" with respect to the Secretary's quasi-judicial determination of probable cause, are adequately represented, in district court proceedings challenging their elections, whether they intervene or not. This is because the incumbent officers shape union policy and hire union lawyers who will represent not only the union, but also the parochial interests of incumbent officers who want to keep their jobs.

Secretary with subtle abuses occurring in the context of a large, international election such as the one involved in this case. The Secretary's position regarding the "bogus" locals is a prime example of his unfamiliarity with internal UMW structure. The Secretary's failure to raise this issue seems to be based at least in part on a misconception of how these local unions arose, what purpose they serve, how they are controlled, the way in which retired miners have been assigned to them, and the method by which they have been voted in bulk for the incumbent officers. Hearings, Subcommittee on Labor, UMW Election—1970, p. 509. Petitioner has intimate knowledge of the internal operations of this particular union and he has thousands of supporters in widely scattered locals who can call attention to violations and help collect evidence. Only with the reinforcement which his intervention can add, will representation of his interests be entirely adequate.

A final important reason for intervention stems from the fact that formulation of ground rules for a rerun election, and disposition of claimed violations, in practice are the product of negotiations by the Secretary with the competing groups. Such negotiations are imbalanced when only the incumbents have legal standing to challenge solutions proposed by the Secretary. All of the pressures are on the Secretary to compromise with the incumbents, for the opposition, without intervention, has no legal leverage. The incumbents', and only the incumbents', agreement is required for a consent order or stipulation; the opposition's protests can be ignored. Just such one-sided pressure led this Court in *Cascade* to speak of the dangers that the government would "knuckle under," 386 U.S., at 142,

and to grant intervention to protect against this danger.²⁰

CONCLUSION

If one thing is clear it is that the trend of the law is toward free intervention where administrative action is concerned. All the fears and all the dangers which administrative agencies have conjured up about intervention have not been enough to persuade the courts to deny those with real interests the right to participate in defending those interests. *International Union, UAW v. Scofield, supra*. Indeed, there is an irony in even the suggestion that "the protected groups in an administrative program [should] pay for their protection by a sacrifice of procedural and litigating rights. . . ." Hart and Wechsler, *The Federal Courts and the Federal System*, 326 (1953).

²⁰ The Secretary's Brief in Opposition evidences the dangers inherent in a legal action without one of the principal interested groups a party to the action. For example, footnote 3 on page 5 indicates a lack of understanding of the reform group's position and a total acceptance of the Union's position. With respect to the continued maintenance of the bogus local unions, the Secretary refers to the fact that the "International Union has consistently interpreted the constitutional provision" as not requiring a local union to disband if it has fewer than 10 active members. But the Secretary here simply adopts an unsupported statement of the International Union without requiring the Union to justify its constitutional interpretation or even to demonstrate that it has consistently interpreted the constitutional provision in this way. With respect to petitioner's charge concerning the pension increase, the Secretary refers to all of the Union's arguments without even mentioning Judge Gesell's ruling rejecting those arguments and removing Boyle as trustee on grounds of the pension increase. *Blankenship v. Boyle*, 329 F. Supp. 1089 (D.D.C., 1971). The spectacle of the Secretary and Boyle's counsel working out the decree for any new election without the countervailing pressure of the reform group hardly comports with the principle of equal justice under law.

For the reasons stated; the decision of the Court of Appeals should be reversed, and the cause remanded to the District Court.

Respectfully submitted,

JOSEPH L. RAUH, JR.

JOHN SILARD

ELLIOTT C. LICHTMAN

1001 Connecticut Ave., N. W.

Washington, D. C. 20036

JOSEPH A. YABLONSKI

CLARICE R. FELDMAN

1812 N Street, N. W.

Washington, D. C. 20036

Of Counsel:

CLYDE W. SUMMERS

Wall and High Streets

New Haven, Connecticut

No. 71-119

In the Supreme Court of the United States

OCTOBER TERM, 1971

MIKE TRBOVICH, PETITIONER

v.

UNITED MINE WORKERS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR

ERWIN N. GRISWOLD,
Solicitor General,

L. PATRICK GRAY III,
Assistant Attorney General,

HARRY R. SACHSE,
Assistant to the Solicitor General,

WALTER H. FLEISCHER,

RAYMOND D. BATTOCCHI,

Attorney,
Department of Justice,
Washington, D.C. 20530.

RICHARD F. SCHUBERT,
Solicitor,

GEORGE T. AVERY,
Associate Solicitor,

BEATE BLOCH,
Attorney,

Department of Labor,
Washington, D.C. 20216.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
1. The election and protest	2
2. The Secretary's investigation and subse-	
quent suit	4
3. The motion to intervene	9
4. Decisions and orders below	10
Summary of argument	11
Argument:	
I. The statutory scheme of the Act and this	
Court's decisions interpreting it are	
inconsistent with petitioner's claimed	
right of intervention, in this case	14
II. The legislative history of the Act is	
inconsistent with petitioner's claimed	
right of intervention, in this case	22
III. The Secretary's consistent interpretation	
of the statute should be followed unless	
there are compelling indications that	
it is wrong	31
IV. Federal Rule 24 does not authorize peti-	
tioner's intervention	32
Conclusion	39

CITATIONS

Cases:

<i>Acuff v. United Papermakers and Paperworkers</i> , 404 F. 2d 169, certiorari denied, 394 U.S. 987	Page 33
<i>Alleghany Corporation v. Kirby</i> , 344 F. 2d 571, certiorari granted, <i>sub. nom. Holt v. Allegheny Corp.</i> , 381 U.S. 933, certiorari dismissed, 384 U.S. 28	33
<i>Blankenship v. Boyle</i> , 329 F. Supp. 1089	8, 35
<i>Calhoon v. Harvey</i> , 379 U.S. 134	10, 15, 18, 32
<i>Cascade Natural Gas Corp. v. El Paso Natural Gas Co.</i> , 386 U.S. 129	37
<i>Hodgson v. Local 6799, United Steel Workers of America</i> , 403 U.S. 333	19
<i>International Union, UAW v. Scofield</i> , 382 U.S. 205	12, 19, 20
<i>Lupton Mfg. Co. v. United States</i> , 388 U.S. 457	37
<i>Martin v. Kalvar Corp.</i> , 411 F. 2d 552	33
<i>Red Lion Broadcasting Co. v. Federal Communications Commission</i> , 395 U.S. 367	31
<i>Shultz v. United Steelworkers of America</i> , District 15, 312 F. Supp. 1044	21, 22
<i>Shultz v. United Steelworkers of America</i> , District 19, 313 F. Supp. 549	21, 22
<i>Sibbach v. Wilson & Co.</i> , 312 U.S. 1	32
<i>Spangler v. Pasadena City Board of Education</i> , 427 F. 2d 1352, certiorari denied <i>sub nom. Alexander v. Pasadena City Board of Education</i> , 402 U.S. 943	38
<i>Stadin v. Union Electric Company</i> , 309 F. 2d 912	33
<i>Stein v. Wirtz</i> , 366 F. 2d 188, certiorari denied, 386 U.S. 996	21, 22
<i>Udall v. Tallman</i> , 380 U.S. 1	31

Cases—Continued

<i>United States v. Atlantic Richfield Company</i> , 50 F.R.D. 369, affirmed <i>sub nom. Bartlett</i> , <i>et al. v. United States</i> , 401 U.S. 986-----	Page 38
<i>United States v. Automobile Manufacturers</i> <i>Ass'n</i> , 307 F. Supp. 617, affirmed <i>sub nom.</i> <i>City of New York v. United States, et al.</i> , 397 U.S. 248-----	37, 38
<i>United States v. Blue Chip Stamp Company</i> , 272 F. Supp. 432, affirmed <i>per curiam sub</i> <i>nom. Thrifty Shoppers Scrip Co. v. United</i> <i>States</i> , 389 U.S. 580-----	37, 38
<i>United States v. Boyle, et al.</i> , (D.D.C. Crim.) No. 346-71-----	11
<i>United States v. Harper & Row Publishers</i> , <i>Inc.</i> (N.D. Ill., E.D., November 27, 1967), affirmed <i>sub nom. City of New York v.</i> <i>United States</i> , 390 U.S. 715-----	37
<i>United States v. Paramount Pictures, Inc.</i> (S.D.N.Y. Eq. No. 87-273, March 22, 1971, affirmed <i>sub nom. Syufy Enterprises, Inc. v.</i> <i>United States</i> , No. 70-329, decided October 12, 1971-----	37
<i>United States v. Sherwood</i> , 312 U.S. 584-----	32
<i>United States v. Western Electric Co.</i> , 1968 CCH Trade Cases 72,415 (D.N.J.), affirmed <i>sub nom. Clark Walter and Sons, Inc. v.</i> <i>United States</i> , 392 U.S. 659-----	37
<i>Wirtz v. Hotel, Motel and Club Employees</i> <i>Union, Local 6</i> , 391 U.S. 492-----	19
<i>Wirtz v. Local Union No. 12, etc., Operating</i> <i>Engineers</i> , 66 LRRM 2080; 56 L.C. § 12,153 (C.D. Cal.)-----	22
<i>Wirtz v. Local Union No. 125, Laborers' Inter-</i> <i>national Union</i> , 389 U.S. 477-----	19, 34
<i>Wirtz v. Local 153, Glass Bottle Blowers Assn.</i> , 389 U.S. 462-----	14, 18, 19, 34

Cases—Continued

<i>Wirtz v. Local Union No. 1377</i> , 288 F. Supp. 914	Page 22
<i>Yablonski v. United Mine Workers</i> (D.D.C.) Civ. No. 3436-69	11

Statutes and rules:

Labor-Management Reporting and Disclosure
Act of 1959, 73 Stat. 519, 29 U.S.C. 401
et seq.:

Section 101(a)(1), 29 U.S.C. 411(a)(1)---	14
Section 102, 29 U.S.C. 412	15, 38
Section 201, 29 U.S.C. 431	10
Section 206, 29 U.S.C. 436	38
Section 208, 29 U.S.C. 438	15
Section 210, 29 U.S.C. 440	15, 38
Section 401, 29 U.S.C. 481	15
Section 401(c), 29 U.S.C. 481(c)	15, 23
Section 402, 29 U.S.C. 482	2, 16, 23, 32, 36
Section 402(a), 29 U.S.C. 482(a)	16, 36
Section 402(b), 29 U.S.C. 482(b)	16
Section 403, 29 U.S.C. 483	2, 16, 28
Section 403(a), 29 U.S.C. 483(a)	39

Federal Rules of Civil Procedure:

Rule 23(1)(c)	38
Rule 24	13, 32
Rule 24(a)	13, 32

Miscellaneous:

104 Cong. Rec. 7953	23
104 Cong. Rec. 10947	23, 25
104 Cong. Rec. 10999	26
104 Cong. Rec. 11487	27
104 Cong. Rec. 18288	27
105 Cong. Rec. 6745	29
105 Cong. Rec. 18116	30
Summers, <i>Judicial Regulation of Union Elections</i> , 70 Yale L.J. 1222	23

Miscellaneous—Continued

Hearings before a Subcommittee of the House Committee on Education and Labor, 86th Cong., 1st Sess.....	Page 30
Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong., 1st Session.....	28, 39
H.R. 8400.....	30
H. Rep. No. 1147, 86th Cong., 2d Sess.....	30
105 Cong. Rec. 17919.....	30
105 Cong. Rec. 18153.....	30
S. 505.....	27, 28, 29
S. 748.....	27, 28
S. 1555.....	29
S. 3751.....	23, 24
S. 3974.....	24, 26
S. Rep. No. 1684, 85th Cong. 2d Sess.....	24
S. Rep. No. 187, 86th Cong., 1st Sess.....	29



IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

MIKE TRBOVICH,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, et al.,
Respondents.

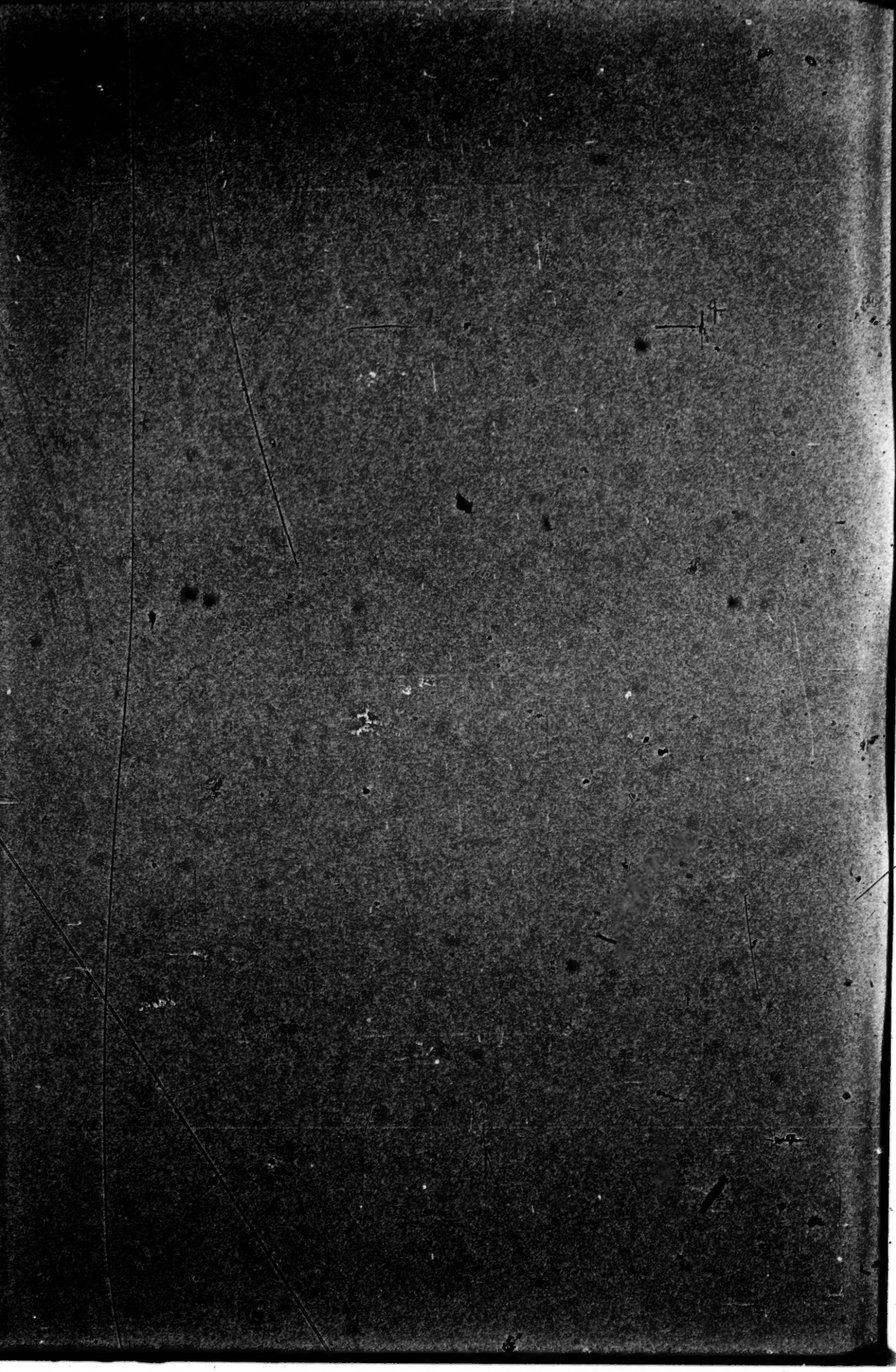
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT,
UNITED MINE WORKERS OF AMERICA

EDWARD L. CAREY
HARRISON COMBS
WILLARD P. OWENS
CHARLES L. WIDMAN
900 Fifteenth Street, N.W.
Washington, D. C. 20005

M. E. BOIARSKY
512 Kanawha Valley Building
Charleston, W. Va. 25301
Counsel for Respondent,
United Mine Workers of America





INDEX

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTES AND RULES INVOLVED	2
QUESTION PRESENTED	2
COUNTERSTATEMENT OF THE CASE	2
A. The 1969 Election; The Challenge Thereof; and The Secretary of Labor's Investigation	2 2
B. The Secretary of Labor's Action	4
C. Petitioner's Motion to Intervene	6
D. The Secretary's Reasons for Refusing to Con- duct a Pre-Election Investigation and for Not Including the Two Grounds Urged by Inter- venor	7 7 8 9
1.	7
2.	8
3.	9
E. The Lower Courts' Judgments	11
SUMMARY OF ARGUMENT	12
I.	12
II.	14

	Page
ARGUMENT	16
I. THE COURT OF APPEALS, AFFIRMING THE DISTRICT COURT'S MEMORANDUM OPINION AND JUDGMENT, CORRECTLY HELD THAT ENFORCEMENT OF POST-ELECTION REMEDY TO CHALLENGE A UNION ELECTION IS STATUTORILY THE EXCLUSIVE FUNCTION OF THE SECRETARY OF LABOR	16
A. The Statutory Language	16
B. The Act's Legislative History Challenges Petitioner's Right to Intervene	17
C. Motions to Intervene Have Been Rejected by Federal Courts	21
II. PETITIONER IS NOT ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a), FEDERAL RULES OF CIVIL PROCEDURE	22
A. Petitioner's Right to Intervene Has Not Been Conceded by UMW	22
B. Rule 82 Precludes Application of Rule 24, Federal Rules	23
C. In Any Event, Petitioner Does Not Meet Rule 24(a)'s Requirements for Intervention as of Right	23
D. Petitioner's Citations Are Not Supportive of His Alleged Right to Intervene	26
CONCLUSION	29

TABLE OF CASES

	Page
<i>Blankenship, et al. v. W. A. Boyle, et al.</i> , Civil No. 2186-69, D.D.C.	9
<i>Calhoon v. Harvey</i> , 379 U.S. 134, 140 (1964)	17
<i>Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.</i> , 386 U.S. 129 (1967)	28
<i>Citizens to Preserve Overton Park v. Volpe</i> , 401 U.S. 402 (1971)	28
<i>Colgate-Palmolive-Peet Co. v. NLRB</i> , 338 U.S. 355, 364 (1949)	13, 21, 22
<i>DeVito v. Shultz</i> , DC, D.C., 1969, 300 F.Supp. 381	22
<i>G. & P. Amusement Co. v. Regent Theater Co.</i> , DC, N.D. Ohio, 1952, 107 F.Supp. 453, 461	15, 28
<i>Griggs v. Duke Power Co.</i> , 28 L. ed 2d 158, 165 (1971)	14, 28
<i>Hodgson v. Steelworkers Local 6799</i> , 403 U.S. 333 (1971)	27
<i>Hodgson v. United Mine Workers of America</i> , 51 F.R.D.270 (1970), 77 LRRM 2496	1
<i>Int. Union, UAW v. Scofield</i> , 382 U.S. 205, 212, 215, 219 (1965)	26, 27, 28
<i>Katrinic v. Wirtz</i> , DC, D.C., 1966, 62 LRRM 2557	22
<i>Lewis, et al. v. Pennington</i> , 6 Cir., 325 F.2d 804, 818 (1963)	8
<i>Mamula v. United Steelworkers of America</i> , 3 Cir., 304 F.2d 108 (1962)	22

	Page
<i>McGuire v. Locomotive Engineers</i> , 6 Cir., 426 F. 2d 504 (1970).....	22
<i>Morrissey v. Shultz</i> , DC, S.D. N.Y., 1970, 311 F.Supp. 744, 74 LRRM 2679.....	22
<i>NLRB v. Exchange Parts</i> , 375 U.S. 405 (1964).....	8
<i>Ravaschieri v. Schultz</i> , DC, S.D. N.Y., 1970, 75 LRRM 2272.....	22
<i>Reynolds v. Marlene Industries Corp.</i> , DC, S.D. N.Y., 1966, 250 F.Supp. 722.....	27
<i>Sears, Roebuck and Co. v. Carpet, etc. Layers</i> , 10 Cir., 410 F.2d 1148, 1151 (1969).....	15, 25, 27
<i>Sears, Roebuck and Co. v. Carpet, etc. Layers</i> , 397 U.S. 655 (1970).....	27
<i>Shultz v. Steelworkers</i> , DC, W.D. Pa., 1970, 313 F.Supp. 549, 74 LRRM 2222.....	21, 22
<i>Shultz v. United Steelworkers of America</i> , DC, W.D. Pa., 1970, 312 F.Supp. 538, 539.....	28
<i>Stein v. Wirtz</i> , 10 Cir., 366 F.2d 188, 189 (1966), cert. den. 386 U.S. 996 (1967).....	13, 14, 21, 23
<i>United Steelworkers v. R. H. Bouligny, Inc.</i> , 382 U.S. 145, 153 (1965).....	15, 25
<i>Van Horn v. Lewis</i> , D.D.C., 1948, 79 F.Supp. 541.....	8, 9
<i>Wirtz v. Local 125, Laborers Int. Union, etc.</i> , 389 U.S. 477 (1968).....	17
<i>Wirtz v. Local 153, Glass Blowers Assn.</i> , 389 U.S. 463, 471-73, 475 (1968).....	14, 17, 24

	Page
<i>Wirtz v. Local Union No. 410, et al., Int. Union of Operating Engineers</i> , 2 Cir., 366 F.2d 438, 442 (1966)	20, 22
<i>Wirtz v. Local 560, Teamsters</i> , DC, N.J., 1965, 61 LRRM 2470	22
<i>Wirtz v. Local 825</i> , DC, N.J., 1965, 60 LRRM 2092	22
<i>Wirtz v. Local Union No. 1377, Int. Bro. of Electrical Workers</i> , DC, N.D. Ohio, 1968, 288 F.Supp. 914	22
<i>Wirtz v. Operating Engineers</i> , DC, C.D. Calif., 1967, 66 LRRM 2080	22
<i>Wirtz v. National Maritime Union of America</i> , 2 Cir., 409 F.2d 1340 (1969)	22
<i>Yablonski, et al. v. United Mine Workers of America</i> , Civil No. 3436-69, D.D.C. sub nom <i>Karl Krafton, et al. (including Mike Trbovich) v. United Mine Workers of America</i>	10

STATUTES

28 USCA 1254(1)	2
28 USCA 2101(c)	2
29 USCA 185	11
29 USCA 501(a) and (b)	11
Labor Management Relations Act, 1947	27
Section 10(1)	27
Labor-Management Reporting and Disclosure Act of 1959 (29 USCA 481, et seq.)	2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 28

	Page
Title I	20
Section 102 (29 USCA 412)	20
Title II	5, 6, 11
Section 201 (29 USCA 431)	6
Section 210 (29 USCA 440)	11
Title III	20
Section 304 (29 USCA 464)	20
Title IV	2, 3, 4, 5, 8, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25
Section 401 (29 USCA 481)	2
Section 401(c) [29 USCA 481(c)]	20
Section 401(e) [29 USCA 481(e)]	8
Section 402 (29 USCA 482)	2, 18
Section 402(a) [29 USCA 482(a)]	3, 16
Section 402(b) [29 USCA 482 (b)]	4, 15, 25
Section 403 (29 USCA 483)	2, 12, 13, 16, 18, 21
Title VI	2, 7
Section 601(a) [29 USCA 521 (a)]	2, 7
National Labor Relations Act	26

RULES

Federal Rules of Civil Procedure:

Rule 24(a)	2, 13, 14, 21, 22, 23, 24, 27, 28
Rule 82	2, 14, 23, 27, 28

MISCELLANEOUS

Page

Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (Published by the National Labor Relations Board—U. S. Government Printing Office, 1959), Vol. I, pp. 29, 62-64, 84, 112, 338, 376, 397, 417, 687, 727, 934, 939; Vol. II, pp. 1431, <i>et seq.</i> , 1452-53, 1693-1702, 1738-39	18, 19
Moore's Federal Practice, 2d Ed., Vol. 3B, ¶24.09-1[1], pp. 284-85	24
Moore's Federal Practice, 2d Ed. Vol. 3B, ¶24.09-1[4], p. 316	15, 24

INDEX TO APPENDIX

Title IV:

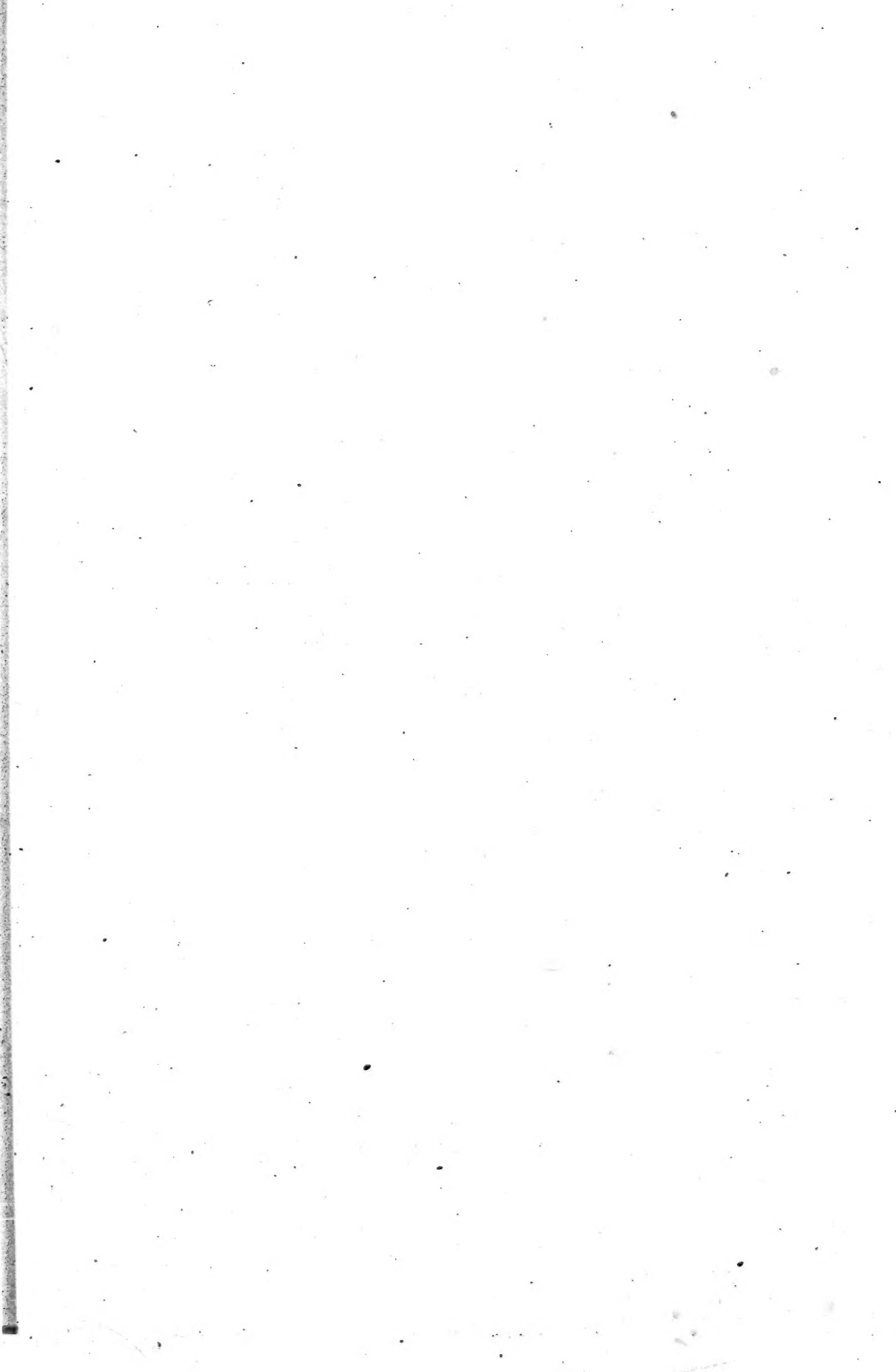
§401 (29 USCA 481)	1a
§402 (29 USCA 482)	5a
§403 (29 USCA 483)	7a

Title VI:

§601 (29 USCA 521)	7a
--------------------------	----

Federal Rules of Civil Procedure:

Rule 24(a)	8a
Rule 82	8a



IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

MIKE TRBOVICH,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT,
UNITED MINE WORKERS OF AMERICA

OPINIONS BELOW

The district court's Memorandum Opinion, published as *Hodgson v. United Mine Workers of America*, appears in 51 F.R.D. 270 (1970) and in the Appendix filed herein at p. 111. The Court of Appeals affirmed without opinion. Its judgment, published in 77 LRRM 2496, appears in the Appendix herein (p. 122).¹

¹Herein, the term "district court" refers to the United States District Court for the District of Columbia, and the term "Court of Appeals" refers to the United States Court of Appeals for the District of Columbia Circuit.

Herein, Petitioner Trobovich is referred to as "petitioner" or "intervenor"; Respondent United Mine Workers of America as "UMW"; and Respondent James Day Hodgson, Secretary of Labor, as "Secretary".

Unless otherwise indicated, all emphases herein are supplied.

JURISDICTION

By order entered April 27, 1971, the Court of Appeals affirmed the district court's denial of petitioner's Motion for Leave to Intervene (A. 122).² The Petition for Certiorari, timely filed under 28 USCA 2101(c), was granted October 19, 1971 (A. 122). This Court's jurisdiction rests upon 28 USCA 1254(1).

STATUTES AND RULES INVOLVED

Statutory provisions involved are Sections 401, 402, 403 and 601(a) of the Landrum-Griffin Act [29 USCA 481, 482 483 and 521(a)]. Involved also are Rule 24(a) and Rule 82, Federal Rules of Civil Procedure. Provisions of the statutes and Rules involved are found in Appendix A hereto.

QUESTION PRESENTED

Whether a member of a labor organization who concededly satisfies all conditions for intervention of right under Rule 24(a), Federal Rules of Civil Procedure, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act of 1959 (called "LMRDA" or "Act") [29 USCA 481, *et seq.*] to set aside a union election.

COUNTERSTATEMENT OF THE CASE

A. THE 1969 ELECTION; THE CHALLENGE THEREOF; AND THE SECRETARY OF LABOR'S INVESTIGATION.

On December 9, 1969, an election of UMW's Inter-

²The abbreviation "A." refers to the printed Appendix filed herein by petitioner.

national Officers was held among 195,000 members³ and climaxed a bitter contest for UMW's presidency between W. A. Boyle, the incumbent President, and Joseph A. "Jock" Yablonski, in which the official tally showed Boyle received 80,577 votes and Yablonski received 46,073 (Pet. Br. 8, 10).⁴

On January 20, 1970, Mike Trbovich, campaign manager for Yablonski, filed a formal complaint with the Labor Department, through Joseph Rauh, Jr., challenging the December 9 election "for reasons stated in Yablonski letter to International tellers" and in "Rauh letter to you dated January 13th", requesting a Labor Department investigation of election and stating "new nominations and new elections essential" (A. 35). Though under the Act's Section 402(a) [29 USCA 482(a)], exhaustion of a member's union remedies is prerequisite to filing a complaint with the Secretary of Labor for an election investigation, respondent UMW, through its General Counsel, requested the Secretary to conduct an immediate investigation of the December 9 election, waiving UMW procedures.

A February 21 letter from attorney Rauh to the Secretary, complaining the Yablonski forces had unsuccessfully pleaded that the Secretary enforce the Act against

³Although an International President, Vice President and Secretary, Treasurer, as well as Auditors and Tellers, were elected, petitioner apparently contests only the International President's election.

⁴The abbreviation "Pet. Br." refers to petitioner's brief filed herein.

Petitioner's reference (Pet. Br. 10) to discovery of the bodies of Mr. and Mrs. Yablonski and their daughter is wholly irrelevant to the issue herein and its inclusion obviously is for purposes of prejudice.

Similarly, statements from Hearings, Subcommittee on Labor, UMW—1971, July 12, 1971, and Senate Hearings, Subcommittee on Labor, UMW Election—1970, p. 78 (Pet. Br. 10, fns. 2 and 3) lack judicial finding support.

UMW, assigned *four* reasons for setting aside the December 9 election, namely (A. 125):

"1. Pre-election violations of law, including the massive use of union personnel and the union treasury, require a new election.

"2. The voting of pensioners through unconstitutional bogey locals was obviously unlawful and requires a new election.

"3. The over a hundred violations on election day, which Joseph A. (Chip) Yablonski recounted in his Affidavit, were probably matched some ten-fold by those about which we have no information and these, too, require a new election.

"4. The incidents of violence and the atmosphere of intimidation and fear made a fair election impossible, and require a new election."

Following UMW's waiver, the Secretary of Labor initiated a comprehensive investigation: 230 professionals, employed both in the field and in Washington, D. C., visited 822 of UMW's 1,260 voting locals, conducting 4,400 interviews of local UMW personnel, volunteer observers, union members, UMW personnel in 22 Districts and Washington, bank officials, transportation officials, radio, T.V., newspaper and advertising persons, involving more than 43,000 man hours of work (A. 152).

B. THE SECRETARY OF LABOR'S ACTION.

Upon review of the investigation, on March 5, 1970—less than two months after the investigation was started—respondent Secretary, pursuant to the Act's Section 402(b) [29 USCA 482 (b)], instituted the instant action in which the Secretary's first cause of action sought to have the district court set aside the election, al-

leging seven violations under the Act's Title IV which included grounds not brought to his attention in the Yablonski and Trbovich complaints. Respondent Secretary decided not to include in his action two allegations which Trbovich urged, namely: (1) that Title IV was violated because union members were permitted to vote in certain pensioner locals, denominated "bogus" locals and composed of less than 10 working members; and (2) Boyle engineered a pension increase to retired members from \$115 to \$150 per month "designed and intended to influence and may have influenced the votes of" pensioned union members "and, therefore, the outcome of the election and which jeopardized the continued solvency of the Fund" (A. 32).

The Secretary's second cause of action alleged UMW was failing to keep proper records on matters required to be reported under Title II and the Secretary sought to compel respondent UMW to maintain certain financial records (A. 15, 114).

In connection with his instituted action of March 5, 1970, the Secretary filed a preliminary injunction motion to prohibit UMW or its agents from thereafter spending funds without keeping records as required by Title II (A. 17). In addition to proceedings relating to the preliminary injunction motion, proceedings in the March 5, 1970 action have included voluminous interrogatories and requests for admissions, numerous depositions taken by both parties, and a trial has been proceeding since September 13, 1971.⁶

⁶On October 29, 1971, upon UMW's motion, the trial was suspended until November 15, 1971, because of the death of UMW attorney Walter E. Gillcrist who had participated prominently as one of UMW's attorneys in that respondent's defense, not only in the district court, but in the Court of Appeals and in this Court as well.

C. PETITIONER'S MOTION TO INTERVENE.

On April 1, 1970, Miners for Democracy was allegedly founded and petitioner allegedly became its National Chairman (A. 29, 111). Approximately seven months after respondent Secretary's March 5 complaint was filed, petitioner, on October 2, 1970, moved the district court for leave to intervene on behalf of himself and as Chairman of and on behalf of Miners for Democracy (A. 28, *et seq.*). In a proposed complaint attached to the intervention motion, petitioner raised two issues in addition to those raised in the Secretary's action: *First*, that a pension increase by the Trustees of the United Mine Workers of America Welfare and Retirement Fund on June 23, 1969 constituted improper interference in the election campaign (A. 32); and *secondly*, that approximately 500 local unions were illegally constituted and should be disbanded before a court-ordered election is held (A. 31-33).

Additionally, intervenor's proffered complaint, seeking to raise a different cause of action under the Act's Section 201 (29 USCA 431), prayed for the appointment of monitors to oversee and approve maintenance of UMW's records and preservation of its assets until such time as the court believes such assets are not in danger of being dissipated, and to establish rules for conducting a new election (A. 33-34).⁷

⁷ The proffered complaint prays for relief, in addition to that in the Secretary's action, including directing UMW to disband local unions not complying with its Constitution and to require the transfer of all members of such locals to those complying with its Constitution, ruling that UMW's President Boyle breached his fiduciary duty to UMW members by raising bituminous pensions to benefit himself and other incumbent UMW officers, and granting intervenor reasonable attorney fees and costs (A. 33-34).

D. THE SECRETARY'S REASONS FOR REFUSING TO CONDUCT A PRE-ELECTION INVESTIGATION AND FOR NOT INCLUDING THE TWO GROUNDS URGED BY INTERVENOR.

1.

The Secretary's explanation for the Department's failure to conduct a pre-election investigation is that it "has *never* conducted an investigation of an election during the campaign" (A. 62) and that a pre-election investigation "is not contemplated by the statute" (A. 64); that while the Act's Section 601 might justify such an investigation, Section 601's language "may not be taken alone" but must be read in context and in light of the drafter's purpose (A. 67); and that "From 1959 until today, the sole use of Section 601 investigatory authority in election cases has been to collect or preserve evidence regarding elections which have already been held and, therefore, in circumstances in which the outcome of the election could not be affected" (A. 66). Noting, *inter alia*, that "The Government must . . . avoid taking sides in a union election, or giving the appearance of doing so", the Secretary avowed that if the Department investigated "during the pre-election period, it might, by the mere fact of investigation alone, be interpreted as taking the side of the party alleging violations" (A. 69). The Secretary realistically observed that Congress was conscious that some violations are committed by an unsuccessful candidate and authorized the Department "to bring action *only* where it is determined that the violations 'may have affected the outcome of the election'" (A. 68). The Secretary cogently inquired, "Can one attribute to the Congress an intent that the Labor Department should investigate before an election and then wait until afterward to determine if the violation could have 'affected the outcome' of the election?" (A. 68). In

further explanation, the Secretary noted "There are an estimated 20,000 union elections each year" and the needed expansion of the investigatory staff if it were incumbent upon his Department to conduct pre-election alleged violations (A. 68).

Moreover, the Secretary explained that action by a union officer during a campaign, to improve the economic condition of his members, does not, by itself, violate the LMRDA (A. 63).

2.

The Secretary's responses to his failure to include in his action the pension increase of which petitioner complains (Pet. Br. 13-16), were (1) under the Act's Section 401(e) "improper interference", as the legislative history indicates, "is limited to interference that amounts to coercion or intimidation" and (2) the "pension levels were not increased by Boyle, but by a majority vote of the trustees" (A. 71). See *Lewis, et al. v. Pennington*, 6 Cir., 325 F.2d 804 (1963).⁶

Rejecting the appositeness of *NLRB v. Exchange Parts*, 375 U.S. 405 (1964) [cited by petitioner, Pet. Br. 16], wherein this Court held an employer interfered with employees' rights by granting a raise to employees during an organizing drive, the Secretary declared the raise demonstrated the employer's power is nonexistent to an international union contest "because neither faction has that kind of unilateral power" and "In a union election if one side is defeated, its power ends and, therefore, even a demonstration of power before the election is not

⁶The Sixth Circuit noted that the district court "expressed the opinion that the action of a majority of the Trustees was required to bind the Fund" under *Van Horn v. Lewis*, D.D.C., 1948, 79 F.Supp. 541, holding that action of one Fund Trustee "alone, without the authorization or consent of the majority of the Trustees, was not sufficient" to bind the Trustees (325 F.2d 818).

necessarily an intimation of what will happen after the election" (A. 72). Additionally, the Secretary posed the query that "If the Labor Department were to decide that a pension raise . . . constitutes 'improper interference', would not an incumbent candidate's negotiation of a raise in the wage scale during the campaign period also be a violation of the Act?" (A. 73).

Significantly, although the pension increase was, as petitioner indicates (Pet. Br. 14), the subject of litigation in *Blankenship, et al. v. W. A. Boyle, et al.*, Civil No. 2186-69, D.D.C., no one and no court has suggested or intimated there should be a roll back of the pension increase. Even Senator Harrison Williams' auditors failed to appreciate that this industrywide irrevocable trust was supposed to operate on a pay-as-you-go basis. This trust was created for the benefit of coal miners and was never intended to accumulate money for its own sake. Financed by royalties on coal produced for use or for sale as a result of a collective bargaining agreement, there is not a shred of evidence to support the contention that the trust will become bankrupt by 1975. Further, petitioner's reference to an actuarial study of the Fund by the U. S. General Accounting Office (Pet. Br. 15) invites the comment made in *Van Horn v. Lewis, supra*, p. 542, that "the Court knows from a rather long business experience that actuaries can reach very many different conclusions if they want to reach them".

3.

The second issue involves petitioner's coined phrase "bogus locals" (Pet. Br. 16-17). The Secretary appropriately noted that "This allegation draws its chief appeal from the use of the words 'bogus' or 'bogey'" (A. 77). The Secretary, upon investigation, found that provisions

of UMW's Constitution requiring at least 10 working members before a local could receive a charter did not require that, if a chartered local ends up with fewer than 10 working members, its charter must be revoked (A. 78). Further, the Secretary declared, the Act contains no authorization "for the Government to compel the transfer of members of one local union to another local" and that "authority to reorganize the internal organizational structure of unions would be such an extraordinary power" as clearly to require new legislation (A. 78). The Secretary characterized UMW's interpretation as "not arbitrary" (A. 78).⁹

The district court's Memorandum Opinion, filed November 17, 1970, concluded that (A. 111):

"As for the first cause of action, it is undisputed that the *exclusive* remedy for challenging an election already conducted is a suit by the Secretary of Labor pursuant to a complaint by a union member and a determination by the Secretary of 'probable cause' to believe that a violation of the law governing elections has occurred";¹⁰

that the Act's legislative history "makes us doubt that intervention by a union member in a suit by the Secretary to set aside an election would be consistent with the congressional purpose" (A. 111-12); that the Act's legislative history showed "the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and

⁹This question previously was raised by petitioner's counsel in *Yablonski, et al. v. United Mine Workers of America*, Civil No. 3436-69, D.D.C. *sub nom* *Karl Kafton, et al.* (including Mike Trbovich) *v. United Mine Workers of America*. Further, as the Secretary found, "If the locals are not legal, the members would just have been transferred to other locals and voted at a different polling place. Remove the label 'bogus' local and the issue falls into perspective" (A. 77).

¹⁰The italicized word "*exclusive*" is that of the district court.

labelled it 'exclusive' deprives this Court of jurisdiction to permit the former alternative via the route of intervention" (A. 112).

As to the second cause, seeking an injunction to compel UMW to maintain financial records, the district court concluded, "The Secretary is the one person authorized by the statute to seek such an injunction" (A. 114).¹¹

E. THE LOWER COURTS' JUDGMENTS.

The district court recognized petitioner's interest in insuring that union funds are spent for the sole benefit of its organization and members; but noted vindication thereof is sought in another suit in the same court (Civil Action 3436-69) for an accounting, restitution and damages pursuant to 29 USCA 185 and 501(a) and (b), wherein the issue is whether UMW misappropriated funds, and that such pending law suit sufficed to assert their rights (A. 114-15). In the instant case, declared the district court, "the dispositive issue is quite different, namely, whether the union has failed to maintain records" required to be reported (A. 114).

The district court rejected petitioner's argument that he had shown "the equivalent of being legally bound by the decree" herein (A. 115).

The Court of Appeals was "in substantial agreement with" the district court's Memorandum Opinion (A. 111) and affirmed the district court's judgment (A. 122).

¹¹Because petitioner's brief does not undertake to justify separately his proposed intervention as to the second cause of action, and is founded on the Act's Section 210 (29 USCA 440) which provides for an action by the Secretary as distinguished from an individual union member, UMW submits the same principles which reject petitioner's claim of intervention as to the first cause of action are equally apposite to the second cause of action.

SUMMARY OF ARGUMENT

I

The Court of Appeals, affirming the district court's Memorandum Opinion and Judgment, correctly held that enforcement of post-election remedy to challenge a union election is statutorily *the exclusive function of the Secretary of Labor*. The Act's Section 403, reading "The remedy provided by this subchapter for challenging an election already conducted shall be exclusive", expressly so provides.

Congress' statutory scheme made plain its intent to entrust enforcement of Title IV to the Secretary's expertise and discretion. Pursuant thereto, the Secretary of Labor instituted the instant action, but rejected therefrom two matters of which petitioner complains as a predicate for his claimed right to intervene in the Secretary's action, despite the Secretary's explicating his reasons for rejecting them. It is obvious that petitioner seeks herein, through intervention, to substitute his judgment for that of the Secretary. Sanction of the intervention motion would clearly thwart Congress' plain intent and frustrate the statutory scheme.

Contrary to petitioner's contention that the legislative history does not support the Court of Appeals' reading of the Act, the district court appropriately noted that "the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and labeled it 'exclusive' deprives this Court of jurisdiction to permit the former via the route of intervention." The Act's legislative history demonstrates the accuracy of the district court's finding.

Petitioner would avoid the Act's *unambiguous* language by an unsupported distinction between the Secre-

tary's exclusive right to initiate Title IV litigation and a claimant's intervention right after such litigation has been instituted. Petitioner, however, ignores that it is the *remedy* which Congress mandated shall be *exclusive*. That Congress intended no such distinction is manifested by Congress' care in delineating those instances in which a union member was to be vested with a litigant's status and those in which he was not so vested, thus evidencing that when Congress intended that union members could permissibly participate in litigation under the Act, Congress knew how to accord them that opportunity. *Inclusio unius est exclusio alterius*.

Further, where, as here, Congress carefully considered but rejected legislation to permit litigation by union members in relation to election matters, this Court rejected an interpretation "to achieve that which Congress refused to enact into law". *Colgate-Palmolive-Peet Co. v. NLRB*, 338 U.S. 355, 364 (1945). Implementation thereof is required in the instant action.

Petitioner concedes that *Stein v. Wirtz*, 10 Cir., 366 F.2d 188 (1966), cert. den. 386 U.S. 996 (1967), held that intervention was precluded by the Act's Section 403. *Stein's* denial accords with numerous district court decisions denying union members' right to intervene in Title IV actions. Moreover, *Stein* noted that the Act conferred upon the Secretary the *exclusive* right to bring civil actions for union election violations; and, declaring there was no way for a union member to prosecute this type of action by original suit, *Stein* continued that "*he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction*" (366 F.2d 189).

Affirmance of the Court of Appeals' judgment is therefore required.

II

Petitioner is not entitled to intervene as of right under Rule 24(a), Federal Rules of Civil Procedure. UMW has not conceded petitioner's satisfaction of the Rule's requirements, as the Question Presented assumes. UMW's contention is now and has been to the contrary.

Under Argument I, UMW has firmly established that a district court's jurisdiction to entertain an action of enforcement of post-election remedy challenging a union election is limited to one instituted by the Secretary of Labor. Rule 82 expressly states that "These rules shall not be construed to extend . . . the jurisdiction of the United States district courts". Petitioner assiduously avoids directing this Court's attention to that Rule, although, relevantly, *Stein* expressly so held. Federal court refusal of union-member intervention (*ante*, p. 13) accords with the Secretary's interpretation of the Act and his opposition herein, which "is entitled to great deference". *Griggs v. Duke Power Co.*, 28 L. ed 2d 158, 165.

In any event, petitioner does not meet Rule 24(a)'s requirements for intervention as of right. Petitioner's emphasis that the Act is designed to be protective of union members' rights ignores totally the "public interest". *Wirtz v. Local 153, Glass Blowers Ass'n.*, 389 U.S. 463, 475 (1968), states that the Act was not designed "merely to protect the right of a union member to run for a particular office in a particular election . . . Congress emphatically asserted a *vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member*". Petitioner's claim of a special interest as leader of a union faction is not protected by Title IV. Petitioner has not only failed to show a legally recognized interest in the litigation's subject distinct from the interest represented by the Secretary, he has failed to establish that

the Secretary's representation of his interest as a union member is inadequate. The "burden to show that representation may be inadequate ought to be upon the applicant" (Moore's Federal Practice, 2d Ed., Vol. 3B, ¶24.09-1[4], p. 316).

Petitioner's argument ignores that the statute entrusts the Secretary with a discretion and right to make findings of probable cause, and that the Secretary rejected the two grounds upon which petitioner premised his claimed right to intervene. Petitioner seeks to do indirectly what concededly he could not do directly, namely, institute a Section 402(b) action, contrary to *Sears, Roebuck and Co. v. Carpet, etc. Layers*, 10 Cir., 410 F.2d 1148, 1151 (1969), that "*What cannot be obtained directly . . . as a party, cannot be obtained indirectly through intervention.*" Factors employed by petitioner as a predicate for intervention, in light of the statutory scheme and its legislative history, are, as this Court stated in *United Steelworkers v. R. H. Bouligny, Inc.*, 382 U.S. 145, 153 (1965), "decisions which we believed suited to the legislative and not the judicial branch".

This Court's agreement with petitioner would serve as a pattern for every candidate in a labor union election to become a potential intervenor, with all the attending procedural pandemonium created by a proposed intervention at variant stages of the Secretary's action.

Petitioner's citations are not supportive of his alleged right to intervene. They represent no more than "the claimed existence" of an intervention right "found in constant assertion" by petitioner's counsel, rather than in law. *G. & P. Amusement Co. v. Regent Theater Co.*, DC, N.D., Ohio, 1952, 107 F. Supp. 453, 461.

The Court of Appeals properly rejected petitioner's intervention effort.

ARGUMENT

I. THE COURT OF APPEALS, AFFIRMING THE DISTRICT COURT'S MEMORANDUM OPINION AND JUDGMENT, CORRECTLY HELD THAT ENFORCEMENT OF POST-ELECTION REMEDY TO CHALLENGE A UNION ELECTION IS STATUTORILY THE EXCLUSIVE FUNCTION OF THE SECRETARY OF LABOR.

As already noted, the Court of Appeals agreed with the district court's Memorandum Opinion and Judgment. The following discussion demonstrates the validity of the Court of Appeals' agreement and judgment:

A. The Statutory Language.

The Act (Section 403; 29 USCA 483) expressly provides that the exclusive remedy for enforcement of Title IV is an action by the Secretary of Labor: "*... The remedy provided by this subchapter for challenging an election already conducted shall be exclusive*".

Unless clear language has lost its meaning, nothing could be clearer than the statutory language. Under the Act's Section 402(a), the Secretary conducts an investigation upon receipt of a member's complaint and files a civil action *only if he finds probable cause* to believe a violation of the Title has occurred in the union election's conduct. The number of investigators, election sites visited, interviews had and man hours employed by the Secretary in investigating the December 9 election leaves no doubt of the Secretary's compliance of duty imposed upon him by the statute (*ante*, p. 4). Further, the Secretary's full explication for rejecting the matters from his civil action mirrors the reasonableness of his exercised discretion. It is obvious that petitioner seeks herein, through intervention, to substitute his judgment for that of the Secretary.

However, as this Court recognized, Congress' statutory

scheme made plain its intent to entrust enforcement of Title IV to the Secretary's expertise and discretion. *Calhoon v. Harvey*, 379 U.S. 134, 140 (1964); *Wirtz v. Local 153, Glass Blowers Assn.*, 389 U.S. 463, 471-73 (1968); *Wirtz v. Local 125, Laborers Int. Union, etc.*, 389 U.S. 477 (1968). Significantly, absent an action instituted by the Secretary, petitioner's proposed intervention would be judicially abortive, and petitioner uses this happenstance as a medium by which to interject into the Secretary's action alleged violations, with respect to which the Secretary has made no findings of probable cause, in direct conflict with this Court's avowal in *Calhoon and Wirtz v. Local 153*, that "Congress deliberately gave exclusive enforcement authority to the Secretary, having 'decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest'" (389 U.S. 473). Sanction of the intervention motion would clearly thwart Congress' plain intent and frustrate the statutory scheme.

B. The Act's Legislative History Challenges Petitioner's Right to Intervene.

The district court, whose judgment the Court of Appeals affirmed, expressed the view that the Act's legislative history "makes us doubt that intervention by a union member" in the Secretary's suit would be consistent with the Act's congressional purpose (A. 111-12). Contrary to petitioner's contention (Pet. Br. 27) that the legislative history does not support the Court of Appeals' reading of the Act, the district court appropriately noted that "the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and labelled it 'exclusive' deprives this Court of jurisdiction to permit the

former via the route of intervention" (A. 112). The Act's legislative history demonstrates the accuracy of the district court's finding.

In S. 505, as referred to the Committee on Labor and Public Welfare, 86th Cong., 1st Sess. (1959), known as the Kennedy (or Kennedy-Ervin) Bill, Sections 302(a)-(d) are identical in all material respects with the Act's Sections 402 and 403 and provided for institution of suit by the Secretary, while Section 303 provided that the "remedies provided by this title shall be exclusive".¹²

In contrast to S. 505, Section 402(a) of H.R. 8342, as reported in the same Congress, *expressly authorized* a union member who had exhausted his internal union remedies to "bring a civil action against such labor organization". Similarly, in contrast to S. 505, the House Bill gave no power to the Secretary to institute judicial action to challenge elections.¹³

Likewise, in contrast to S. 505, on January 28, 1959—eight days following S. 505—there was also introduced in the Senate S. 748, which, as referred, expressly authorized "members of a labor organization to obtain appropriate relief" in an action or proceeding.¹⁴

At the same Session of Congress, there was reported (under authority of the order of the Senate of April 13, 1959) by Mr. Kennedy, with amendments, S. 1555 which, in its Section 302, authorized a civil action to be brought by the Secretary.¹⁵ A report on S. 1555 noted that:

¹²See *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* (published by the National Labor Relations Board—U. S. Government Printing Office, 1959). Vol. I, pp. 29, 62-64.

¹³*Ibid.* Vol. I, pp. 687, 727.

¹⁴*Ibid.* Vol. I, pp. 84, 112.

¹⁵*Ibid.* Vol. I, pp. 338, 376.

"However, since the bill provides an effective and expeditious remedy for overthrowing an improperly held election and holding a new election, *the Federal remedy is made the sole remedy and private litigation would be precluded*".¹⁶

The Senate enacted S. 1555 on April 27, 1959¹⁷ and the House subsequently passed its House Bill 8342, as amended.¹⁸ In a Conference Report (H.R. No. 147 on S. 1555), managers on the part of the House reported, with reference to the issue herein, that:

"The House amendment differs from the Senate bill in that the *members of the union*, instead of the Secretary, can bring the civil action, and, therefore, there would be no investigation by the Secretary"

and, further,

"The conference substitute is the same as the Senate bill on this point".¹⁹

The Bill, as reported out by the Conference Committee, became the Act.²⁰

Nothing in petitioner's treatment of the Act's legislative history (Pet. Br. 25-34) contains a single utterance in challenge of the district court's legislative finding and the Court of Appeals' affirmance thereof. Petitioner would avoid the Act's *unambiguous* language that "The remedy provided . . . for challenging an election already conducted shall be exclusive" by an unsupported distinction between the Secretary's exclusive right to initiate Title IV litigation and a claimant's intervention right

¹⁶*Ibid*, Vol. I, pp. 397, 417.

¹⁷*Ibid*, Vol. II, pp. 1431, *et seq.*

¹⁸*Ibid*, Vol. II, pp. 1693-1702.

¹⁹*Ibid*, Vol. I, pp. 934, 939.

²⁰*Ibid*, Vol. II, pp. 1452-53, 1738-39.

after such litigation has been instituted. However, petitioner ignores that it is the *remedy* which Congress has mandated shall be *exclusive*. As stated in the Second Circuit's *Wirtz v. Operating Engineers*, 366 F.2d 438, 442 (1966), "Congress intentionally created a narrow remedy under Title IV . . . so that interference with union elections and management would be kept at a minimum".

Further, that Congress intended no such distinction as petitioner presses upon this Court is manifested by Congress' care in delineating those instances in which a union member was to be vested with a litigant's status and those in which he was not so vested: Title I, Section 102 (29 USCA 412) expressly provides a union member's right to bring suit to redress violations of that Title; Title IV, Section 401(c) [29 USCA 481(c)] accords to "any bona fide candidate" for a union office the right of suit; and, similarly, trusteeships can be voided by action of either the Secretary or individual union members under the Act's Section 304 (29 USCA 464).

Thus, it is evident that when Congress intended that union members could permissibly participate in litigation under the Act, Congress knew how to accord them that opportunity. Apropos is the maxim *inclusio unius est exclusio alterius*. The statutory provisions granting members the right to a litigation status stand in sharp contrast to the herein scrutinized language that "The remedy provided . . . for challenging an election already conducted shall be exclusive".

Where, as here, Congress carefully considered but rejected legislation which would have permitted union members to litigate in relation to election matters, this Court rejected an interpretation "to achieve that which Congress refused to enact into law". *Colgate-Palmolive-*

Peet Co. v. NLRB, 338 U.S. 355, 364 (1949). UMW submits that implementation thereof is required in the instant situation.

**C. Motions to Intervene Have Been Rejected
by Federal Courts.**

Petitioner concedes (Pet. Br. 22, fn. 13) that *Stein v. Wirtz*, 10 Cir., 366 F.2d 188 (1966), cert. den 386 U.S. 996 (1967) held that intervention was precluded by the Act's Section 403. Even though *Stein's* intervention motion was denied prior to the effective date of the 1966 amendments to Rule 24, Federal Rules, the Tenth Circuit's decision came subsequent thereto and, relevantly, its result accords with the numerous district court decisions (*post*, p. 22) denying union members' right to intervention in Title IV actions. Moreover, in affirming the district court's denial of *Stein's* motion, the Tenth Circuit stated (366 F.2d 189):

"The Act confers upon the Secretary of Labor the *exclusive* right to bring civil actions against labor organizations for violations of members' rights in union elections and election procedures. 29 U.S.C. §§482(b), 483; *Calhoon v. Harvey*, 379 U.S. 134, 85 S. Ct. 292, 13 L. Ed. 2d 190. There being no way for appellant to prosecute this type of action by original suit, he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction. Fed. R. Civ. P. 82; *Bantel v. McGrath*, 10 Cir., 215 R.2d 297."²¹

As above indicated, district courts have denied motions to intervene in actions brought by the Secretary of Labor to invalidate union elections. *Shultz v. Steelworkers*, DC,

²¹The italicized word "exclusive" is that of the Tenth Circuit.

W.D. Pa., 1970, 313 F.Supp. 549, 74 LRRM 2222 wherein the applicant for intervention was the complainant to the Secretary of Labor; *Wirtz v. Local Union No. 1377, Int. Bro. of Electrical Workers*, DC, N.D. Ohio, 1968, 288 F.Supp. 914; *Wirtz v. Operating Engineers*, DC, C.D. Calif., 1967, 66 LRRM 2080; *Wirtz v. Local 825*, DC, N.J., 1965, 60 LRRM 2092; *Wirtz v. Local 560, Teamsters*, DC, N.J., 1965, 61 LRRM 2470.^{22a}

UMW submits that affirmance of the Court of Appeals' judgment is required.

II. PETITIONER IS NOT ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a), FEDERAL RULES OF CIVIL PROCEDURE.

A. Petitioner's Right to Intervene Has Not Been Conceded by UMW.

While the Question Presented (*ante*, p. 2) assumes that it is conceded that petitioner satisfies all requirements for intervention of right under Rule 24, Federal Rules of Civil Procedure, actually UMW has made no such concession, petitioner's brief makes no claim it has and, indeed, UMW's contention is now and has been to the contrary throughout the instant litigation.²³

²²Courts have rejected suits instituted by union members questioning the validity of already-conducted union elections, as well as suits to compel the Secretary to bring a Title IV post-election action. See *Wirtz v. Local Union 410, et al., Int. Union of Operating Engineers*, 2 Cir., 366 F.2d 438 (1966); *Mamula v. United Steelworkers of America*, 3 Cir., 304 F.2d 108 (1962); *McGuire v. Locomotive Engineers*, 6 Cir., 426 F.2d 504 (1970); *Katrinic v. Wirtz*, DC, D.C., 1966, 62 LRRM 2557; *Ravaschieri v. Schultz*, DC, S.D. N.Y., 1970, 75 LRRM 2272; *Morrissey v. Shultz*, DC, S.D. N.Y., 1970, 311 F.Supp. 744, 74 LRRM 2679; *DeVito v. Shultz*, DC, D.C., 1969, 300 F.Supp. 381. Additionally, *Wirtz v. National Maritime Union of America*, 2 Cir., 409 F.2d 1340 (1969) affirmed the denial of a motion by union members to overrule the Secretary with respect to rules he formulated to govern a new election.

²³Petitioner's claim of concession is limited to the Secretary. Notably, even petitioner admits that the Secretary opposes petitioner's position of concession (Pet. Br. 21, fn. 11).

E. Rule 82 Precludes Application of Rule 24, Federal Rules.

UMW's discussion under Argument I has firmly established that a district court's jurisdiction to entertain an action of enforcement of post-election remedy challenging a union election is limited to one instituted by the Secretary of Labor. Hence, a vital observation in relation to petitioner's claim of right to intervene (Pet. Br. 34-44) is the fact that Rule 82, Federal Rules, expressly states that "These rules shall not be construed to extend . . . the jurisdiction of the United States district courts . . ." *Petitioner assiduously avoids directing this Court's attention to Rule 82, although, relevantly, the Stein case expressly so held.*

As *Stein* holds, "*There being no way for appellant to prosecute this type of action by original suit, he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction*" (366 F.2d 189).

C. In Any Event, Petitioner Does Not Meet Rule 24(a)'s Requirements for Intervention as of Right.

Rule 24(a), Federal Rules of Civil Procedure, provides:

"Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Moore's Federal Practice, 2d Ed., Vol. 3B, ¶24.09-1[1], pp. 284-85 recites:

"In summary, an application for non-statutory intervention as of right under the 1966 version of Rule 24(a) must meet the following requirements: The application must (1) be timely, (2) show an interest in the subject matter of the action, (3) show that the protection of the interest may be impaired by the disposition of the action, and (4) show that the interest is not adequately represented by an existing party."

Petitioner's emphasis that the Act is designed to be protective of rights of union members (Pet. Br. 40) ignores totally the "public interest", for, as this Court stated in *Wirtz v. Local 153, Glass Blowers Assn.*, 389 U.S. 463, 475 (1968), the Act was not designed "merely to protect the right of a union member to run for a particular office in a particular election . . . Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member". Thus, petitioner's claim of a special interest as leader of a faction within the union is not a right protected by Title IV. Hence, petitioner has not only failed to show a legally recognized interest in the litigation's subject distinct from the interest represented by the Secretary, he has failed to establish that the Secretary's representation of his interest as a union member is inadequate. An applicant whose "interest is adequately represented by existing parties" has no right to intervene under Rule 24(a)(2). *Moore's Federal Practice*, 2d Ed., Vol. 3B, ¶24.09-1[4], p. 316, recites that "the burden to show that representation may be inadequate ought to be upon the applicant".

Petitioner's argument also ignores that the statute vests in the Secretary a discretion and the right to make findings of probable cause, and that in the exercise of such statutory authority the Secretary *rejected the two grounds upon which petitioner premised his claimed right to intervene*. Not only does petitioner seek herein to substitute his judgment for that of the Secretary, but he seeks to do indirectly what concededly he could not do directly, namely, institute a Section 402(b) action, which prompts UMW to urge this Court's implementation of the Tenth Circuit's holding in *Sears, Roebuck Co. v. Carpet, etc. Layers*, 410 F.2d 1148, 1151 (1969) that "What cannot be obtained directly . . . as a party, cannot be obtained indirectly through intervention".

Petitioner's plaint (Pet. Br. 42-44) that the Secretary and those designated by him to enforce Title IV have limited knowledge of the internal structure of unions, including UMW, and limited resources for investigating alleged violations is abortive in light of the thorough investigation made by the Secretary in the instant case. In any event, these, and the other factors employed by petitioner as a predicate for intervention (Pet. Br. 42-44), are, as this Court stated in *United Steelworkers v. R. H. Bouligny, Inc.*, 382 U.S. 145, 153 (1965), "decisions which we believe suited to the legislative and not the judicial branch". The Act's legislative history underscores the necessity for *Bouligny's* implementation in the instant case.

This Court's agreement with petitioner would serve as a pattern for every candidate in a labor union election to become a potential intervenor with all the attending procedural pandemonium created by proposed intervention at variant stages of the Secretary's action.

**D. Petitioner's Citations Are Not Supportive
of His Alleged Right to Intervene.**

None of the citations in petitioner's brief (pp. 34-44) support his contention of his claimed right to intervene in the Secretary's action.

Int. Union, UAW v. Scofield, 382 U.S. 205 (1965) [Pet. Br. 36-40] is inapposite. While in *Scofield*, this Court held the successful party in an NLRB proceeding could intervene to protect his victory upon appeal by the unsuccessful party, this Court's opinion suffices to demonstrate *Scofield's* inapplicability in its recognition that (p. 219)

"... When the General Counsel issues a complaint and the proceeding reaches the adjudicative stage, the course the hearing will take is in the agency's control, *but the charging party is accorded formal recognition: he participates in the hearings as a 'party'*; he may call witnesses and cross-examine others, may file exceptions to any order of the trial examiner, and may file a petition for reconsideration to a Board order . . . Of course, if the Board dismisses the complaint, he can obtain review as a person aggrieved . . ."

Thus, *Scofield* allowed a participant in the fact-finding procedures to protect his victory on appeal, which this Court held justified by congressional intent in passing the National Labor Relations Act and that the intervention did not "impair effective discharge" of the Board's duties (382 U.S. 215) and would save judicial time by preventing a charging party's second appeal should NLRB's decision be reversed (p. 212).

The Act under scrutiny herein not only does not provide for a complainant to the Secretary to be a statutorily recognized party, but, to the contrary, "The remedy provided . . . shall be exclusive" and, as shown herein (*ante*,

p. 17), the legislative history affirmatively demonstrated congressional negation of that right to a complaining union member and Rule 82 forbids expansion of jurisdiction to include Rule 24(a) intervention (*ante*, p. 23).

Indeed, *Sears, Roebuck and Co. v. Carpet, etc. Layers*, 10 Cir., 410 F.2d 1148 (1969) held *Scotfield* to be "distinguishable and of limited assistance" in its holding that a charging party who appeared in an action by NLRB's Regional Director for a temporary injunction under Section 10(1), Labor Management Relations Act of 1947, lacked standing to appeal the district court's denial of an injunction, because the charging party before NLRB is not a party in a Section 10(1) action. Significantly, to the charging party's alternative contention that it had a right to intervene to prosecute the appeal, the Tenth Circuit, rejecting such contention, cogently stated: "What cannot be obtained directly by asserting a right to appeal as a party, cannot be obtained indirectly through intervention" (410 F.2d 1151).²⁴ Accord: *Reynolds v. Marlene Industries Corp.*, DC, S.D. N.Y., 1966, 250 F.Supp. 722.

Petitioner's arguments (Pet. 40-41) that a complaining party before the Secretary "has an even greater role than the charging party before" NLRB "and hence, even stronger standing to intervene in subsequent judicial proceedings" is not supported by *Hodgson v. Steelworkers Local 6799*, 403 U.S. 333 (1971), which pertained only to the Secretary's right to expand the complaint made to him by a union member.

²⁴Subsequently this Court vacated the Tenth Circuit's judgment and remanded the case to the district court with directions to dismiss the complaint as moot, since the question whether the employer (Sears) could appeal from the district court's denial of a Section 10(1) injunction had become moot. *Sears, Roebuck and Co. v. Carpet, etc. Layers*, 397 U.S. 655 (1970).

Nor is petitioner aided by *Shultz v. United Steelworkers of America*, DC, W.D. Pa., 1970, 312 F.Supp. 538, 539, which allowed intervention to protect "property interests of the applicant as an individual".

Further, like *Scofield* (*ante*, pp. 26-27), neither *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129 (1967), nor *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971) [cited by petitioner, Br. 22, 35, 38] was concerned with a situation comparable to the instant one wherein Congress mandated that the remedy instituted by the Secretary is *exclusive*, wherein the Act's legislative history shows unequivocally that Congress did not intend that union members be vested with a litigant's status, and wherein use of Rule 24(a) is precluded by Rule 82, both Federal Rules.

Petitioner's citations represents no more than "the claimed existence" of an intervention right "found in constant assertion" by petitioner's counsel, rather than in law. *G. & P. Amusement Co. v. Regent Theater Co.*, DC, N.D. Ohio, 1952, 107 F.Supp. 453, 461.

Federal court refusal of union-member intervention (*ante*, pp. 21-22) accords with the Secretary's interpretation of the Act and his opposition herein, which "is entitled to great deference". *Griggs v. Duke Power Co.*, 28 L. ed 2d 158, 165 (1971).

The foregoing discussion abundantly demonstrates that petitioner is not entitled to intervene as of right under Rule 24(a), Federal Rules, and the Court of Appeals appropriately placed its approval upon the district court's rejection of petitioner's effort to do so.

CONCLUSION

For the reasons stated herein, UMW submits that this Court should affirm the judgment of the Court of Appeals in the instant case.

Respectfully submitted,

EDWARD L. CAREY

HARRISON COMBS

WILLARD P. OWENS

CHARLES L. WIDMAN

900 Fifteenth Street, N.W.

Washington, D. C. 20005

M. E. BOIARSKY

512 Kanawha Valley Building

Charleston, W. Va. 25301

*Counsel for Respondent,
United Mine Workers of America*

November 15, 1971

APPENDIX

APPENDIX

Title IV of the Labor-Management Reporting and Disclosure Act of 1959 provides as follows:

§ 401 (29 USCA 481): Terms of Office and Election Procedures—Officers of National or International Labor Organizations, Manner of Election

(a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

Officers of local labor organizations; manner of election

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

Requests for distribution of campaign literature; civil action for enforcement; jurisdiction; inspection of membership lists; adequate safeguards to insure fair election

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor

of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

Officers of intermediate bodies; manner of election

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of results; preservation of ballots and records

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every

member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

Election of officers by convention of delegates; manner of conducting convention; preservation of records

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the

secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

Use of dues, assessments or similar levies, and funds of employer for promotion of candidacy of person

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

Removal of officers guilty of serious misconduct

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

Rules and regulations for determining adequacy of removal procedures

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h) of this section. Pub.L. 86-257, Title IV, § 401, Sept. 14, 1959, 73 Stat. 532.

**§ 402 (29 USCA 482): Enforcement—Filing of Complaint;
Presumption of Validity of Challenged Election**

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

**Investigation of complaint; commencement of civil action by
Secretary; jurisdiction; preservation of assets**

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of

this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

Review of orders; stay of order directing election

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal. Pub. L. 86-257, Title IV, § 402, Sept. 14, 1959, 73 Stat. 534.

§ 403 (29 USCA 483). Application of Other Laws; Existing Rights and Remedies; Exclusiveness of Remedy for Challenging Election

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive. Pub. L. 86-257, Title IV, § 403, Sept. 14, 1959, 73 Stat. 534.

SUBCHAPTER VII.—

MISCELLANEOUS PROVISIONS

Title VI of the Labor-Management Reporting and Disclosure Act of 1959 provides as follows:

§ 601 (29 USCA 521).. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for

failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

* * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

* * * *

Rule 82. Jurisdiction and Venue Unaffected. These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purposes of Title 28, U.S.C., §§1391-93.

TRBOVICH *v.* UNITED MINE WORKERS
OF AMERICA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-119. Argued November 18, 1971—Decided January 17, 1972

Petitioner union member sought unsuccessfully to intervene pursuant to Fed. Rule Civ. Proc. 24 (a) in litigation brought by the Secretary of Labor under Title IV of the Labor-Management Reporting and Disclosure Act to set aside an election of union officers for violations of the Act. Petitioner, who initiated the entire enforcement proceeding with his complaint to the Secretary, sought to present evidence and argument in support of the Secretary's election challenge, and to urge additional grounds for setting the election aside. *Held*:

1. There is nothing in the language of Title IV of the Act or its legislative history to bar intervention by a union member in a post-election enforcement suit, so long as that intervention is limited to claims of illegality presented by the Secretary's complaint. Pp. 530-537.

2. Intervention under Rule 24 (a) is warranted for this petitioner, as he may have a valid complaint about the performance of the Secretary, who protects not only the rights of individual union members but also the public interest in free and democratic union elections, two functions that may not always dictate the same approach to the conduct of the litigation. Pp. 537-539.

Remanded to the District Court with directions to allow limited intervention.

MARSHALL, J., delivered the opinion of the Court in which BURGER, C. J., and BRENNAN, STEWART, WHITE, and BLACKMUN, JJ., joined. DOUGLAS, J., filed an opinion dissenting in part, *post*, p. 539. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

Joseph L. Rauh, Jr., argued the cause for petitioner. With him on the briefs were *John Silard*, *Elliott C. Lichtman*, *Joseph A. Yablonski*, and *Clarice R. Feldman*.

Solicitor General Griswold argued the cause for respondent Secretary of Labor. With him on the brief were *Assistant Attorney General Gray, Harry R. Sachse, Walter H. Fleischer, Raymond D. Battocchi, Richard F. Schubert, George T. Avery, and Beate Bloch. Edward L. Carey, Harrison Combs, Willard P. Owens, Charles L. Widman, and M. E. Boiarsky* filed a brief for respondent United Mine Workers of America.

Melvin L. Wulf and Sanford Jay Rosen filed a brief for the American Civil Liberties Union as *amicus curiae* urging reversal.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The Secretary of Labor instituted this action under § 402 (b) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 534, 29 U. S. C. § 482 (b), to set aside an election of officers of the United Mineworkers of America (UMWA), held on December 9, 1969. He alleged that the election was held in a manner that violated the LMRDA in numerous respects,¹ and he sought an order requiring a new election to be held under his supervision.

Petitioner, a member of the UMWA, filed the initial complaint with the Secretary that eventually led him to file this suit. Petitioner now seeks to intervene in the litigation, pursuant to Fed. Rule Civ. Proc. 24 (a), in order (1) to urge two additional grounds for setting aside

¹ The complaint alleged that the Union violated the Act by, *inter alia*, failing to use secret ballots, permitting campaigning at the polls, denying candidates the right to have observers at polling places and at the counting of ballots, subjecting members to reprisals in connection with their election activities, failing to conduct elections in some locals, and using union assets to promote the candidacy of the incumbents.

the election,² (2) to seek certain specific safeguards with respect to any new election that may be ordered,³ and (3) to present evidence and argument in support of the Secretary's challenge to the election. The District Court denied his motion for leave to intervene, on the ground that the LMRDA expressly stripped union members of any right to challenge a union election in the courts, and gave that right exclusively to the Secretary. *Hodgson v. United Mine Workers*, 51 F. R. D. 270 (1970). The Court of Appeals affirmed on the basis of the District Court opinion, 77 L. R. R. M. 2496 (CADC 1971). We granted certiorari to determine whether the LMRDA imposes a bar to intervention by union members under Rule 24, in a suit initiated by the Secretary. *Post*, p. 880.⁴ We conclude that it does not, and we remand the case to the District Court with directions to permit intervention.

I

The LMRDA was the first major attempt of Congress to regulate the internal affairs of labor unions.⁵ Having conferred substantial power on labor organizations, Con-

² Petitioner alleged as additional violations of the Act (1) that the Union required members to vote in certain locals, composed entirely of pensioners, which petitioner claims are illegally constituted under the UMWA Constitution; and (2) that the incumbent president improperly influenced the pensioners' vote by bringing about a pension increase just before the election.

³ Petitioner asks the court to order the Union to disband the pensioner locals, to publish a ruling to the effect that the president breached his fiduciary duty by bringing about the pension increase, and to establish new comprehensive rules to govern future elections.

⁴ We expedited consideration of this case in view of the fact that the litigation is presently pending in the District Court and it has not been stayed.

⁵ See generally Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851 (1960); Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819 (1960).

gress began to be concerned about the danger that union leaders would abuse that power, to the detriment of the rank-and-file members. Congress saw the principle of union democracy as one of the most important safeguards against such abuse, and accordingly included in the LMRDA a comprehensive scheme for the regulation of union elections.

Title IV of the statute establishes a set of substantive rules governing union elections, LMRDA § 401, 29 U. S. C. § 481, and it provides a comprehensive procedure for enforcing those rules, LMRDA § 402, 29 U. S. C. § 482. Any union member who alleges a violation may initiate the enforcement procedure. He must first exhaust any internal remedies available under the constitution and bylaws of his union. Then he may file a complaint with the Secretary of Labor, who "shall investigate" the complaint. Finally, if the Secretary finds probable cause to believe a violation has occurred, he "shall . . . bring a civil action against the labor organization" in federal district court, to set aside the election if it has already been held, and to direct and supervise a new election. With respect to elections not yet conducted, the statute provides that existing rights and remedies apart from the statute are not affected. But with respect to an election already conducted, "[t]he remedy provided by this subchapter . . . shall be exclusive." LMRDA § 403, 29 U. S. C. § 483.

The critical statutory provision for present purposes is § 403, 29 U. S. C. § 483, making suit by the Secretary the "exclusive" post-election remedy for a violation of Title IV. This Court has held that § 403 prohibits union members from initiating a private suit to set aside an election. *Calhoon v. Harvey*, 379 U. S. 134, 140 (1964). But in this case, petitioner seeks only to participate in a pending suit that is plainly authorized by the statute; it cannot be said that his claim is

defeated by the bare language of the Act. The Secretary, relying on legislative history, argues that § 403 should be construed to bar intervention as well as initiation of a suit by the members. In his view the legislative history shows that Congress deliberately chose to exclude union members entirely from any direct participation in judicial enforcement proceedings under Title IV. The Secretary's argument rests largely on the fact that two alternative proposals figured significantly in the legislative history of Title IV, and each of these rejected bills would have authorized individual union members to bring suit. In the words of the District Court:

"We think the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and labelled it 'exclusive' deprives this Court of jurisdiction to permit the former alternative via the route of intervention." 51 F. R. D., at 272.

That argument misconceives the legislative history and misconstrues the statute. A review of the legislative history shows that Congress made suit by the Secretary the exclusive post-election remedy for two principal reasons: (1) to protect unions from frivolous litigation and unnecessary judicial interference with their elections, and (2) to centralize in a single proceeding such litigation as might be warranted with respect to a single election. Title IV as enacted serves these purposes by referring all complaints to the Secretary so that he can screen out frivolous ones, and by consolidating all meritorious complaints in a single proceeding, the Secretary's suit in federal district court. The alternative proposals were rejected simply because they failed to accomplish these objectives. There is no evidence whatever that Congress was opposed to participation by union members

in the litigation, so long as that participation did not interfere with the screening and centralizing functions of the Secretary.

The enforcement provisions of Title IV originated in a bill introduced by Senator John Kennedy in 1958. That bill, S. 3751, provided for suit by the Secretary as the exclusive remedy for violation of the rules relating to union elections. Senator Kennedy described the bill as a "modest proposal," one which would protect union members "without undue interference in the internal affairs of what I believe are essentially private institutions—that is, American trade unions." 104 Cong. Rec. 7954. The Senate passed an expanded version of the bill, S. 3974, which retained the original enforcement scheme, and reflected a continuing legislative interest in minimizing judicial interference with union elections. See S. Rep. No. 1684, 85th Cong., 2d Sess., 12-15 (1958). That bill was defeated in the House of Representatives, 104 Cong. Rec. 18288, but essentially the same enforcement scheme was retained the following year in S. 1555, the Kennedy-Ervin bill which was ultimately passed by both Houses and enacted into law.

In the Senate, the principal advocate of a provision authorizing individual union members to bring suit was Senator Barry Goldwater. He introduced a bill, S. 748, endorsed by the Administration, that would have authorized both the Secretary and the members to file suit to enforce the rules relating to union elections.⁶ During

⁶ The Goldwater-Administration bill provided that a member could file suit with respect to any violation of the election title unless that claimed violation was the subject of a pending action by the Secretary. It also provided that enforcement suits could be filed in either state or federal courts. The question of member suits was, throughout the debates, intertwined with the question of preserving pre-existing state remedies, since prior to the enact-

the Senate Hearings, a number of witnesses compared the enforcement provisions of the two bills. The primary objection to the provision for member suits in the Goldwater bill was that it might lead to multiple litigation in multiple forums, and thereby impose on the union the severe burden of mounting multiple defenses. A related objection was that the Goldwater bill failed to interpose a screening mechanism between the dissatisfied union member and the courtroom, and thereby imposed on the union the burden of responding to frivolous complaints.

Perhaps the most vehement opposition to the Goldwater bill came from the AFL-CIO. Its spokesman, Andrew Biemiller, testified that "[t]he bill would result in placing union officers in a straitjacket since they could be haled into court, virtually without limitation, to defend union policies or programs in suits brought against them by any dissident union member [or] minority group." Hearings on S. 505 et al. before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong., 1st Sess., 567 (1959); see also *id.*, at 578-579 (analysis of S. 748 by Arthur J. Goldberg; then special counsel to the AFL-CIO). Mul-

ment of the LMRDA the only remedy for illegal election conduct was a member suit in state court.

Pre-existing state remedies presented the additional problem, not relevant here, of multiple litigation that was not only inconvenient as a matter of procedure but also in conflict as a matter of substance, for the state remedies related to state-defined rights that were not always identical to the new rights defined in the LMRDA. The debates reflect great concern with the proper relationship between state and federal remedies, and much less concern with the relationship between private and public enforcement. See, e. g., S. Rep. No. 187, 86th Cong., 1st Sess., 19-22, 101-104 (1959) (majority and minority views); Hearings on H. R. 3540 et al. before a Joint Subcommittee of the House Committee on Education and Labor, 86th Cong., 1st Sess., pt. 4, p. 1611 (1959) (analysis of S. 1555 by Sen. Goldwater), reprinted at 105 Cong. Rec. 10102.

multiple litigation and unnecessary harassment, then, were seen as the principal evils of the provision for member suits. And it was precisely those evils that the draftsmen of the Kennedy-Ervin bill sought to avoid. According to Professor Archibald Cox, who was a principal consultant to the draftsmen, the Kennedy proposal made suit by the Secretary the exclusive post-election remedy in order to "centralize control of the proceedings," to adjudicate the validity of an election "once and for all in one forum," and to avoid "unnecessary harassment of the union on one side and . . . friendly suits aimed at foreclosing the Secretary's action on the other." *Id.*, at 135.

Thus, when the Senate Committee reported out the Kennedy-Ervin bill rather than its competitor, it is reasonable to infer that the Committee, and later the Senate, regarded the provision for exclusive enforcement by the Secretary as a device for eliminating frivolous complaints and consolidating meritorious ones. There is no basis whatever for the further conclusion suggested by the Secretary, that the Senate opposed any form of direct participation by union members in Title IV enforcement litigation.

The legislative history in the House of Representatives provides even less support for the Secretary's position. The House initially rejected the Senate bill and passed an alternative authorizing only union members, and not the Secretary, to bring suit to enforce the election title of the bill. H. R. 8342, see H. R. Rep. No. 741, 86th Cong., 1st Sess., 15-17 (1959). Even Senator Goldwater, the leading advocate of member suits, thought the House bill inferior to the Senate bill in this regard, because the matter of election violations was too important to be left exclusively to the vagaries of private enforcement. 105 Cong. Rec. 16489 (comparison of House and Senate bills by Sen. Goldwater). The Conference Committee and the House ultimately adopted the Senate's enforce-

ment provisions, thereby affirming the need for public enforcement of Title IV. See H. R. Conf. Rep. No. 1147, 86th Cong., 1st Sess., 35 (1959). That action, however, can in no sense be read as a rejection of all forms of private participation in enforcement litigation, since the House at no time considered the possibility that union members might assist the Secretary rather than displace him.

With respect to litigation by union members, then, the legislative history supports the conclusion that Congress intended to prevent members from pressing claims not thought meritorious by the Secretary, and from litigating in forums or at times different from those chosen by the Secretary. Only if intervention would frustrate either of those objectives can the statute fairly be read to prohibit intervention as well as initiation of suits by members.

II

Intervention by union members in a pending enforcement suit, unlike initiation of a separate suit, subjects the union to relatively little additional burden.⁷ The principal intrusion on internal union affairs has already been accomplished, in that the union has already been summoned into court to defend the legality of its election. Intervention in the suit by union members will not subject the union to burdensome multiple litigation, nor will it compel the union to respond to a new and potentially groundless suit. Thus, at least insofar

⁷ For the origins and development of the procedural device of intervention, see Moore & Levi, *Federal Intervention*, 45 *Yale L. J.* 565 (1936), 47 *Yale L. J.* 898 (1938); *Developments in the Law—Multi-party Litigation in the Federal Courts*, 71 *Harv. L. Rev.* 874, 897-906, 988-992 (1958). The distinction between intervention and initiation is thoughtfully discussed in Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 *Harv. L. Rev.* 721, 726-729 (1968).

as petitioner seeks only to present evidence and argument in support of the Secretary's complaint, there is nothing in the language or the history of the LMRDA to prevent such intervention.

The question is closer with respect to petitioner's attempt to add to the Secretary's complaint two additional grounds for setting aside the union election. These are claims that the Secretary has presumably determined to be without merit. Hence, to require the union to respond to these claims would be to circumvent the screening function assigned by statute to the Secretary. We recognize that it is less burdensome for the union to respond to new claims in the context of the pending suit than it would be to respond to a new and independent complaint. Nevertheless, we think Congress intended to insulate the union from any complaint that did not appear meritorious to both a complaining member and the Secretary. Accordingly, we hold that in a post-election enforcement suit, Title IV imposes no bar to intervention by a union member, so long as that intervention is limited to the claims of illegality presented by the Secretary's complaint.⁸

III

Finally, the Secretary argues that even if the LMRDA does not bar intervention, petitioner has no right to

⁸ This limitation, however, applies only to the claimed grounds for setting aside the old election, and not to the proposed terms of any new one that may be ordered. For if the court finds merit in the Secretary's complaint and sets the election aside, then the statute requires the court to direct a new election in conformity with the constitution and bylaws of the union, and the requirements of Title IV. Since the court is not limited in this regard to consideration of remedies proposed by the Secretary, there is no reason to prevent the intervenors from assisting the court in fashioning a suitable remedial order. Cf. *Hodgson v. Steelworkers*, 403 U. S. 333, 344 (WHITE, J., dissenting).

intervene under the terms of Fed. Rule Civ. Proc. 24 (a). Rule 24 (a)(2) gives one a right to intervene if (1) he claims a sufficient interest in the proceedings, and (2) that interest is not "adequately represented by existing parties."⁹

The Secretary does not contend that petitioner's interest in this litigation is insufficient; he argues, rather, that any interest petitioner has is adequately represented by the Secretary. The court below did not reach this question, in light of its threshold determination that Rule 24 had no application to the case. Nevertheless, we think it clear that in this case there is sufficient doubt about the adequacy of representation to warrant intervention.¹⁰

The Secretary contends that petitioner's only legally cognizable interest is the interest of all union members in democratic elections, and he says that interest is identical with the interest represented by the Secretary in Title IV litigation. Hence he argues that petitioner's interest must be adequately represented unless the court is prepared to find that the Secretary has failed to perform his statutory duty. We disagree.

The statute plainly imposes on the Secretary the duty to serve two distinct interests, which are related, but not identical. First, the statute gives the individual

⁹ Fed. Rule Civ. Proc. 24 (a):

"Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

¹⁰ The requirement of the Rule is satisfied if the applicant shows that representation of his interest "may be" inadequate; and the burden of making that showing should be treated as minimal. See 3B J. Moore, Federal Practice ¶ 24.09-1 [4] (1969).

528.

Opinion of DOUGLAS, J.

union members certain rights against their union, and "the Secretary of Labor in effect becomes the union member's lawyer" for purposes of enforcing those rights. 104 Cong. Rec. 10947 (remarks of Sen. Kennedy). And second, the Secretary has an obligation to protect the "vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." *Wirtz v. Local 153, Glass Bottle Blowers Assn.*, 389 U. S. 463, 475 (1968). Both functions are important, and they may not always dictate precisely the same approach to the conduct of the litigation. Even if the Secretary is performing his duties, broadly conceived, as well as can be expected, the union member may have a valid complaint about the performance of "his lawyer." Such a complaint, filed by the member who initiated the entire enforcement proceeding, should be regarded as sufficient to warrant relief in the form of intervention under Rule 24 (a) (2).

The case is remanded to the District Court with directions to allow limited intervention in accordance with this opinion.

So ordered

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS, dissenting in part.

I join the opinion of the Court to the extent that it holds that Title IV of the Landrum-Griffin Act does not bar intervention by union members, pursuant to Fed. Rule Civ. Proc. 24 (a), in suits initiated by the Secretary of Labor challenging union elections. I differ from the majority, however, in that I would also permit the union members in this case to raise their additional

grounds* for setting aside the disputed election. In my view, the limited intervention granted by the majority serves neither the purpose of the liberalizing 1966 amendments to Rule 24, nor the twin purposes of Title IV—to preserve unions from a multiplicity of frivolous election challenges, and also to centralize in a single proceeding such litigation as might be warranted with respect to a single election.

Here, the Secretary has served his screening function. He has decided that petitioner's election challenge is meritorious. The Court concedes, moreover, that the burden on the union to defend against the additional claims would not be particularly burdensome, compared to the onus of an independent action. *Ante*, at 537. These claims relate squarely to the election whose legality the union must defend. I would permit them to be heard.

*These claims both related to alleged manipulation of pensioners by the incumbents. One claim attacked so-called "bogus" locals, composed entirely of pensioners, which were "run" by the incumbents. The second claim was that the union president attempted improperly to influence the pensioners' vote by arranging for increased pension benefits just before the election.

